

20191618e2

1                   A bill to be entitled  
2           An act relating to tobacco and nicotine products;  
3           providing a short title; creating s. 163.085, F.S.;  
4           defining terms; preempting the establishment of the  
5           minimum age for the sale or delivery of tobacco  
6           products, nicotine products, or nicotine dispensing  
7           devices to the state; providing exceptions; amending  
8           s. 210.095, F.S.; deleting the definition of the term  
9           "adult"; defining the term "the minimum age for  
10          purchase"; conforming provisions to changes made by  
11          the act; amending s. 386.212, F.S.; revising the age  
12          under which it is unlawful to smoke in, on, or near  
13          school property; amending s. 569.002, F.S.; defining  
14          the terms "the minimum age for purchase" and "any  
15          person under the minimum age for purchase"; replacing  
16          the term "any person under the age of 18" with "any  
17          person under the minimum age for purchase"; amending  
18          s. 569.007, F.S.; providing that it is unlawful to  
19          sell or deliver tobacco products to persons under the  
20          minimum age for purchase; providing an exception;  
21          amending s. 569.0075, F.S.; revising the age under  
22          which the gift of tobacco products to a person by  
23          certain entities is prohibited; amending s. 569.008,  
24          F.S.; revising legislative intent to reflect that the  
25          Legislature intends to prevent the sale of tobacco  
26          products to persons under a specified age; conforming  
27          provisions to changes made by the act; amending s.  
28          569.101, F.S.; revising the age limitation that  
29          applies to the sale, delivery, bartering, furnishing,

20191618e2

30 or giving of tobacco products; conforming provisions  
31 to changes made by the act; amending s. 569.11, F.S.;  
32 revising the age limitation that applies to possessing  
33 tobacco products; revising the age limitation that  
34 applies to unlawful misrepresentation of age or  
35 military service for certain purposes; conforming  
36 provisions to changes made by the act; amending ss.  
37 569.12, 569.14, and 569.19, F.S.; conforming  
38 provisions to changes made by the act; amending s.  
39 877.112, F.S.; defining the term "any person under 21  
40 years of age"; revising the age limitations relating  
41 to nicotine products and nicotine dispensing devices;  
42 conforming provisions to changes made by the act;  
43 providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. This act may be cited as the "Tobacco 21 Act."

48 Section 2. Section 163.085, Florida Statutes, is created to  
49 read:

50 163.085 Preemption of the establishment of the minimum age  
51 for tobacco products, nicotine products, or nicotine dispensing  
52 devices.—

53 (1) DEFINITIONS.—As used in this section, the term:

54 (a) "Local government" means a county, municipality, or  
55 special district.

56 (b) "Minimum age" means the lawful age to purchase or  
57 knowingly possess tobacco products, nicotine products, or  
58 nicotine dispensing devices.

20191618e2

59 (c) "Nicotine dispensing device" has the same meaning as in  
60 s. 877.112.

61 (d) "Nicotine product" has the same meaning as in s.  
62 877.112.

63 (e) "Retail licensure" means any certification,  
64 registration, or license that is required for a person, firm,  
65 association, or corporation to deal, at retail, with or  
66 regarding any tobacco products.

67 (f) "Tobacco products" has the same meaning as in s.  
68 569.002.

69 (2) PREEMPTION.—The establishment of the minimum age for  
70 the sale and delivery of tobacco products, nicotine products, or  
71 nicotine dispensing devices is preempted to the state. Nothing  
72 in this section shall be construed to affect a local  
73 government's ability to require retail licensure for the sale of  
74 tobacco products.

75 Section 3. Present paragraphs (b) through (f) of subsection  
76 (1) of section 210.095, Florida Statutes, are redesignated as  
77 paragraphs (a) through (e), respectively, a new paragraph (f) is  
78 added to that section, and present paragraph (a) of subsection  
79 (1), paragraph (c) of subsection (2), paragraph (a) of  
80 subsection (3), paragraph (a) of subsection (4), subsection (5),  
81 and paragraphs (a), (b), (e), and (g) of subsection (8) of that  
82 section are amended, to read:

83 210.095 Mail order, Internet, and remote sales of tobacco  
84 products; age verification.—

85 (1) For purposes of this section, the term:

86 ~~(a) "Adult" means an individual who is at least of the~~  
87 ~~legal minimum purchase age for tobacco products.~~

20191618e2

88           (f) "The minimum age for purchase" means 21 years of age.

89           (2)

90           (c) A person may not make a delivery sale of tobacco  
91 products to any individual who is not the minimum age for  
92 purchase ~~an adult~~.

93           (3) A person may not mail, ship, or otherwise deliver  
94 tobacco products in connection with an order for a delivery sale  
95 unless, before the first delivery to the consumer, the person  
96 accepting the order for the delivery sale:

97           (a) Obtains from the individual submitting the order a  
98 certification that includes:

99           1. Reliable confirmation that the individual is the minimum  
100 age for purchase ~~an adult~~; and

101           2. A statement signed by the individual in writing and  
102 under penalty of perjury which:

103           a. Certifies the address and date of birth of the  
104 individual; and

105           b. Confirms that the individual wants to receive delivery  
106 sales from a tobacco company and understands that, under the  
107 laws of this state, the following actions are illegal:

108           (I) Signing another individual's name to the certification;

109           (II) Selling tobacco products to individuals under the  
110 legal minimum purchase age; and

111           (III) Purchasing tobacco products, if the person making the  
112 purchase is under the legal minimum purchase age.

113

114 In addition to the requirements of this subsection, a person  
115 accepting an order for a delivery sale may request that a  
116 consumer provide an electronic mail address.

20191618e2

117 (4) The notice described in paragraph (3)(c) must include  
118 prominent and clearly legible statements that sales of tobacco  
119 products are:

120 (a) Illegal if made to individuals who are not the minimum  
121 age for purchase ~~adults~~.

122  
123 The notice must include an explanation of how each tax has been,  
124 or is to be, paid with respect to the delivery sale.

125 (5) Each person who mails, ships, or otherwise delivers  
126 tobacco products in connection with an order for a delivery sale  
127 must:

128 (a) Include as part of the shipping documents, in a clear  
129 and conspicuous manner, the following statement: "Tobacco  
130 Products: Florida law prohibits shipping to individuals under 21  
131 ~~18~~ years of age and requires the payment of all applicable  
132 taxes."

133 (b) Use a method of mailing, shipping, or delivery which  
134 obligates the delivery service to require:

135 1. The individual submitting the order for the delivery  
136 sale or another individual who is the minimum age for purchase  
137 ~~adult~~ who resides at the individual's address to sign his or her  
138 name to accept delivery of the shipping container. Proof of the  
139 legal minimum purchase age of the individual accepting delivery  
140 is required only if the individual appears to be under 27 years  
141 of age.

142 2. Proof that the individual is either the addressee or the  
143 individual who is the minimum age for purchase ~~adult~~ designated  
144 by the addressee, in the form of a valid, government-issued  
145 identification card bearing a photograph of the individual who

20191618e2

146 signs to accept delivery of the shipping container.

147 (c) Provide to the delivery service, if such service is  
148 used, evidence of full compliance with subsection (7).

149

150 If the person accepting a purchase order for a delivery sale  
151 delivers the tobacco products without using a delivery service,  
152 the person must comply with all of the requirements of this  
153 section which apply to a delivery service. Any failure to comply  
154 with a requirement of this section constitutes a violation  
155 thereof.

156 (8) (a) Except as otherwise provided in this section, a  
157 violation of this section by a person other than an individual  
158 who is not the minimum age for purchase ~~an adult~~ is a  
159 misdemeanor of the first degree, punishable as provided in s.  
160 775.082 or s. 775.083, and:

161 1. For a first violation of this section, the person shall  
162 be fined \$1,000 or five times the retail value of the tobacco  
163 products involved in the violation, whichever is greater.

164 2. For a second or subsequent violation of this section,  
165 the person shall be fined \$5,000 or five times the retail value  
166 of the tobacco products involved in the violation, whichever is  
167 greater.

168 (b) A person who is the minimum age for purchase ~~an adult~~  
169 and knowingly submits a false certification under subsection (3)  
170 commits a misdemeanor of the first degree, punishable as  
171 provided in s. 775.082 or s. 775.083. For each offense, the  
172 person shall be fined \$10,000 or five times the retail value of  
173 the tobacco products involved in the violation, whichever is  
174 greater.

20191618e2

175 (e) A person who, in connection with a delivery sale,  
176 delivers tobacco products on behalf of a delivery service to an  
177 individual who is not the minimum age for purchase ~~an adult~~  
178 commits a misdemeanor of the third degree, punishable as  
179 provided in s. 775.082 or s. 775.083.

180 (g) An individual who is not the minimum age for purchase  
181 ~~an adult~~ and who knowingly violates any provision of this  
182 section commits a misdemeanor of the third degree, punishable as  
183 provided in s. 775.082 or s. 775.083.

184 Section 4. Subsection (1) of section 386.212, Florida  
185 Statutes, is amended to read:

186 386.212 Smoking prohibited near school property; penalty.—

187 (1) It is unlawful for any person under 21 ~~18~~ years of age  
188 to smoke tobacco in, on, or within 1,000 feet of the real  
189 property comprising a public or private elementary, middle, or  
190 secondary school between the hours of 6 a.m. and midnight. This  
191 section does not apply to any person occupying a moving vehicle  
192 or within a private residence.

193 Section 5. Present subsections (3) through (7) of section  
194 569.002, Florida Statutes, are redesignated as subsections (4)  
195 through (8), respectively, a new subsection (3) is added to that  
196 section, and present subsection (7) is amended, to read:

197 569.002 Definitions.—As used in this chapter, the term:

198 (3) "The minimum age for purchase" means 21 years of age.

199 (8) ~~(7)~~ "Any person under the minimum age of purchase ~~18~~"  
200 does not include any person under the minimum age of purchase ~~18~~  
201 who:

202 ~~(a) Has had his or her disability of nonage removed under~~  
203 ~~chapter 743;~~

20191618e2

204        ~~(a)-(b)~~ Is in the military reserve or on active duty in the  
205 Armed Forces of the United States; or

206        ~~(c) Is otherwise emancipated by a court of competent~~  
207 ~~jurisdiction and released from parental care and responsibility;~~  
208 ~~or~~

209        ~~(b)-(d)~~ Is acting in his or her scope of lawful employment  
210 with an entity licensed under the provisions of chapter 210 or  
211 this chapter.

212        Section 6. Subsections (1) and (2) of section 569.007,  
213 Florida Statutes, are amended to read:

214        569.007 Sale or delivery of tobacco products;  
215 restrictions.—

216        (1) In order to prevent persons under the minimum age of  
217 purchase ~~18 years of age~~ from purchasing or receiving tobacco  
218 products, the sale or delivery of tobacco products is  
219 prohibited, except:

220        (a) When under the direct control or line of sight of the  
221 dealer or the dealer's agent or employee; or

222        (b) Sales from a vending machine are prohibited under the  
223 provisions of paragraph (1)(a) and are only permissible from a  
224 machine that is equipped with an operational lockout device  
225 which is under the control of the dealer or the dealer's agent  
226 or employee who directly regulates the sale of items through the  
227 machine by triggering the lockout device to allow the dispensing  
228 of one tobacco product. The lockout device must include a  
229 mechanism to prevent the machine from functioning if the power  
230 source for the lockout device fails or if the lockout device is  
231 disabled, and a mechanism to ensure that only one tobacco  
232 product is dispensed at a time.

20191618e2

233 (2) The provisions of subsection (1) shall not apply to an  
234 establishment that prohibits persons under 21 ~~18~~ years of age on  
235 the licensed premises.

236 Section 7. Section 569.0075, Florida Statutes, is amended  
237 to read:

238 569.0075 Gift of sample tobacco products prohibited.—The  
239 gift of sample tobacco products to any person under the minimum  
240 age for purchase ~~age of 18~~ by an entity licensed or permitted  
241 under the provisions of chapter 210 or this chapter, or by an  
242 employee of such entity, is prohibited and is punishable as  
243 provided in s. 569.101.

244 Section 8. Subsections (1), (2), and (3) of section  
245 569.008, Florida Statutes, are amended to read:

246 569.008 Responsible retail tobacco products dealers;  
247 qualifications; mitigation of disciplinary penalties; diligent  
248 management and supervision; presumption.—

249 (1) The Legislature intends to prevent the sale of tobacco  
250 products to persons under the minimum age for purchase ~~18 years~~  
251 ~~of age~~ and to encourage retail tobacco products dealers to  
252 comply with responsible practices in accordance with this  
253 section.

254 (2) To qualify as a responsible retail tobacco products  
255 dealer, the dealer must establish and implement procedures  
256 designed to ensure that the dealer's employees comply with the  
257 provisions of this chapter. The dealer must provide a training  
258 program for the dealer's employees which addresses the use and  
259 sale of tobacco products and which includes at least the  
260 following topics:

261 (a) Laws covering the sale of tobacco products.

20191618e2

262 (b) Methods of recognizing and handling customers under the  
263 minimum age for purchase ~~18 years of age~~.

264 (c) Procedures for proper examination of identification  
265 cards in order to verify that customers are not under the  
266 minimum age for purchase ~~18 years of age~~.

267 (d) The use of the age audit identification function on  
268 electronic point-of-sale equipment, where available.

269 (3) In determining penalties under s. 569.006, the division  
270 may mitigate penalties imposed against a dealer because of an  
271 employee's illegal sale of a tobacco product to a person under  
272 the minimum age for purchase ~~18 years of age~~ if the following  
273 conditions are met:

274 (a) The dealer is qualified as a responsible dealer under  
275 this section.

276 (b) The dealer provided the training program required under  
277 subsection (2) to that employee before the illegal sale  
278 occurred.

279 (c) The dealer had no knowledge of that employee's  
280 violation at the time of the violation and did not direct,  
281 approve, or participate in the violation.

282 (d) If the sale was made through a vending machine, the  
283 machine was equipped with an operational lock-out device.

284 Section 9. Section 569.101, Florida Statutes, is amended to  
285 read:

286 569.101 Selling, delivering, bartering, furnishing, or  
287 giving tobacco products to persons under the minimum age for  
288 purchase ~~18 years of age~~; criminal penalties; defense.—

289 (1) It is unlawful to sell, deliver, barter, furnish, or  
290 give, directly or indirectly, to any person who is under the

20191618e2

291 minimum age for purchase ~~18 years of age~~, any tobacco product.

292 (2) Any person who violates subsection (1) commits a  
293 misdemeanor of the second degree, punishable as provided in s.  
294 775.082 or s. 775.083. However, any person who violates  
295 subsection (1) for a second or subsequent time within 1 year of  
296 the first violation, commits a misdemeanor of the first degree,  
297 punishable as provided in s. 775.082 or s. 775.083.

298 (3) A person charged with a violation of subsection (1) has  
299 a complete defense if, at the time the tobacco product was sold,  
300 delivered, bartered, furnished, or given:

301 (a) The buyer or recipient falsely evidenced that she or he  
302 was the minimum age for purchase ~~18 years of age~~ or older;

303 (b) The appearance of the buyer or recipient was such that  
304 a prudent person would believe the buyer or recipient to be the  
305 minimum age for purchase ~~18 years of age~~ or older; and

306 (c) Such person carefully checked a driver license or an  
307 identification card issued by this state or another state of the  
308 United States, a passport, or a United States armed services  
309 identification card presented by the buyer or recipient and  
310 acted in good faith and in reliance upon the representation and  
311 appearance of the buyer or recipient in the belief that the  
312 buyer or recipient was the minimum age for purchase ~~18 years of~~  
313 ~~age~~ or older.

314 Section 10. Section 569.11, Florida Statutes, is amended to  
315 read:

316 569.11 Possession, misrepresenting age or military service  
317 to purchase, and purchase of tobacco products by persons under  
318 the minimum age for purchase ~~18 years of age~~ prohibited;  
319 penalties; jurisdiction; disposition of fines.-

20191618e2

320 (1) It is unlawful for any person under the minimum age for  
321 purchase ~~18 years of age~~ to knowingly possess any tobacco  
322 product. Any person under the minimum age for purchase ~~18 years~~  
323 ~~of age~~ who violates the provisions of this subsection commits a  
324 noncriminal violation as provided in s. 775.08(3), punishable  
325 by:

326 (a) For a first violation, 16 hours of community service  
327 or, instead of community service, a \$25 fine. In addition, the  
328 person must attend a school-approved anti-tobacco program, if  
329 locally available;

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

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

337  
338 Any second or subsequent violation not within the 12-week time  
339 period after the first violation is punishable as provided for a  
340 first violation.

341 (2) It is unlawful for any person under the minimum age for  
342 purchase ~~18 years of age~~ to misrepresent his or her age or  
343 military service for the purpose of inducing a dealer or an  
344 agent or employee of the dealer to sell, give, barter, furnish,  
345 or deliver any tobacco product, or to purchase, or attempt to  
346 purchase, any tobacco product from a person or a vending  
347 machine. Any person under the minimum age for purchase ~~18 years~~  
348 ~~of age~~ who violates a provision of this subsection commits a

20191618e2

349 noncriminal violation as provided in s. 775.08(3), punishable  
350 by:

351 (a) For a first violation, 16 hours of community service  
352 or, instead of community service, a \$25 fine and, in addition,  
353 the person must attend a school-approved anti-tobacco program,  
354 if available;

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

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

362

363 Any second or subsequent violation not within the 12-week time  
364 period after the first violation is punishable as provided for a  
365 first violation.

366 (3) Any person under the minimum age for purchase ~~18 years~~  
367 ~~of age~~ cited for committing a noncriminal violation under this  
368 section must sign and accept a civil citation indicating a  
369 promise to appear before the county court or comply with the  
370 requirement for paying the fine and must attend a school-  
371 approved anti-tobacco program, if locally available. If a fine  
372 is assessed for a violation of this section, the fine must be  
373 paid within 30 days after the date of the citation or, if a  
374 court appearance is mandatory, within 30 days after the date of  
375 the hearing.

376 (4) A person charged with a noncriminal violation under  
377 this section must appear before the county court or comply with

20191618e2

378 the requirement for paying the fine. The court, after a hearing,  
379 shall make a determination as to whether the noncriminal  
380 violation was committed. If the court finds the violation was  
381 committed, it shall impose an appropriate penalty as specified  
382 in subsection (1) or subsection (2). A person who participates  
383 in community service shall be considered an employee of the  
384 state for the purpose of chapter 440, for the duration of such  
385 service.

386 (5) (a) If a person under the minimum age for purchase 18  
387 ~~years of age~~ is found by the court to have committed a  
388 noncriminal violation under this section and that person has  
389 failed to complete community service, pay the fine as required  
390 by paragraph (1) (a) or paragraph (2) (a), or attend a school-  
391 approved anti-tobacco program, if locally available, the court  
392 must direct the Department of Highway Safety and Motor Vehicles  
393 to withhold issuance of or suspend the driver license or driving  
394 privilege of that person for a period of 30 consecutive days.

395 (b) If a person under the minimum age for purchase 18 years  
396 ~~of age~~ is found by the court to have committed a noncriminal  
397 violation under this section and that person has failed to pay  
398 the applicable fine as required by paragraph (1) (b) or paragraph  
399 (2) (b), the court must direct the Department of Highway Safety  
400 and Motor Vehicles to withhold issuance of or suspend the driver  
401 license or driving privilege of that person for a period of 45  
402 consecutive days.

403 (6) Eighty percent of all civil penalties received by a  
404 county court pursuant to this section shall be remitted by the  
405 clerk of the court to the Department of Revenue for transfer to  
406 the Department of Education to provide for teacher training and

20191618e2

407 for research and evaluation to reduce and prevent the use of  
408 tobacco products by children. The remaining 20 percent of civil  
409 penalties received by a county court pursuant to this section  
410 shall remain with the clerk of the county court to cover  
411 administrative costs.

412 Section 11. Paragraph (b) of subsection (2) and subsection  
413 (3) of section 569.12, Florida Statutes, are amended to read:

414 569.12 Jurisdiction; tobacco product enforcement officers  
415 or agents; enforcement.—

416 (2)

417 (b) A tobacco product enforcement officer is authorized to  
418 issue a citation to a person under the minimum age for purchase  
419 ~~of 18~~ when, based upon personal investigation, the officer has  
420 reasonable cause to believe that the person has committed a  
421 civil infraction in violation of s. 386.212 or s. 569.11.

422 (3) A correctional probation officer as defined in s.  
423 943.10(3) is authorized to issue a citation to a person under  
424 the minimum age for purchase ~~of 18~~ when, based upon personal  
425 investigation, the officer has reasonable cause to believe that  
426 the person has committed a civil infraction in violation of s.  
427 569.11.

428 Section 12. Section 569.14, Florida Statutes, is amended to  
429 read:

430 569.14 Posting of a sign stating that the sale of tobacco  
431 products to persons under the minimum age for purchase ~~18 years~~  
432 ~~of age~~ is unlawful; enforcement; penalty.—

433 (1) A dealer that sells tobacco products shall post a clear  
434 and conspicuous sign in each place of business where such  
435 products are sold which substantially states the following:

20191618e2

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THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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

THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 877.112.

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

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

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

20191618e2

465                   YOU CANNOT BE SOLD ~~BUY~~ TOBACCO PRODUCTS.

466

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

473           (5) The division, through its agents and inspectors, shall  
474           enforce this section.

475           (6) Any person who fails to comply with subsection (1) is  
476           guilty of a misdemeanor of the second degree, punishable as  
477           provided in s. 775.082 or s. 775.083.

478           Section 13. Subsections (3) and (4) of section 569.19,  
479           Florida Statutes, are amended to read:

480           569.19 Annual report.—The division shall report annually  
481           with written findings to the Legislature and the Governor by  
482           December 31, on the progress of implementing the enforcement  
483           provisions of this chapter. This must include, but is not  
484           limited to:

485           (3) The number of violations for selling tobacco products  
486           to persons under the minimum age for purchase ~~18~~, and the  
487           results of administrative hearings on the above and related  
488           issues.

489           (4) The number of persons under the minimum age for  
490           purchase ~~18~~ cited for violations of s. 569.11 and sanctions  
491           imposed as a result of citation.

492           Section 14. Section 877.112, Florida Statutes, is amended  
493           to read:

20191618e2

494 877.112 Nicotine products and nicotine dispensing devices;  
495 prohibitions for persons under 21 years of age ~~minors~~;  
496 penalties; civil fines; signage requirements; preemption.—

497 (1) DEFINITIONS.—As used in this section, the term:

498 (a) "Any person under 21 years of age" does not include any  
499 person under the age of 21 who:

500 1. Is in the military reserve or on active duty in the  
501 Armed Forces of the United States; or

502 2. Is acting in his or her scope of lawful employment with  
503 an entity that sells, manufactures, or distributes nicotine  
504 products or nicotine dispensing devices.

505 (b) ~~(a)~~ "Nicotine dispensing device" means any product that  
506 employs an electronic, chemical, or mechanical means to produce  
507 vapor from a nicotine product, including, but not limited to, an  
508 electronic cigarette, electronic cigar, electronic cigarillo,  
509 electronic pipe, or other similar device or product, any  
510 replacement cartridge for such device, and any other container  
511 of nicotine in a solution or other form intended to be used with  
512 or within an electronic cigarette, electronic cigar, electronic  
513 cigarillo, electronic pipe, or other similar device or product.

514 (c) ~~(b)~~ "Nicotine product" means any product that contains  
515 nicotine, including liquid nicotine, that is intended for human  
516 consumption, whether inhaled, chewed, absorbed, dissolved, or  
517 ingested by any means, but does not include a:

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

519 2. Product regulated as a drug or device by the United  
520 States Food and Drug Administration under Chapter V of the  
521 federal Food, Drug, and Cosmetic Act; or

522 3. Product that contains incidental nicotine.

20191618e2

523        (d)~~(e)~~ "Self-service merchandising" means the open display  
524 of nicotine products or nicotine dispensing devices, whether  
525 packaged or otherwise, for direct retail customer access and  
526 handling before purchase without the intervention or assistance  
527 of the retailer or the retailer's owner, employee, or agent. An  
528 open display of such products and devices includes the use of an  
529 open display unit.

530        (2) PROHIBITIONS ON SALE TO PERSONS UNDER 21 YEARS OF AGE  
531 ~~MINORS~~.—It is unlawful to sell, deliver, barter, furnish, or  
532 give, directly or indirectly, to any person who is under 21 ~~18~~  
533 years of age, any nicotine product or a nicotine dispensing  
534 device.

535        (3) PROHIBITIONS ON GIFTING SAMPLES TO PERSONS UNDER 21  
536 YEARS OF AGE ~~MINORS~~.—The gift of a sample nicotine product or  
537 nicotine dispensing device to any person under the age of 21 ~~18~~  
538 by a retailer of nicotine products or nicotine dispensing  
539 devices, or by an employee of such retailer, is prohibited.

540        (4) PENALTIES.—Any person who violates subsection (2) or  
541 subsection (3) commits a misdemeanor of the second degree,  
542 punishable as provided in s. 775.082 or s. 775.083. However, any  
543 person who violates subsection (2) or subsection (3) for a  
544 second or subsequent time within 1 year of the first violation  
545 commits a misdemeanor of the first degree, punishable as  
546 provided in s. 775.082 or s. 775.083.

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

551        (a) The buyer or recipient falsely evidenced that she or he

20191618e2

552 was 21 ~~18~~ years of age or older;

553 (b) The appearance of the buyer or recipient was such that  
554 a prudent person would believe the buyer or recipient to be 21  
555 ~~18~~ years of age or older; and

556 (c) Such person carefully checked a driver license or an  
557 identification card issued by this state or another state of the  
558 United States, a passport, or a United States Armed Services  
559 identification card presented by the buyer or recipient and  
560 acted in good faith and in reliance upon the representation and  
561 appearance of the buyer or recipient in the belief that the  
562 buyer or recipient was 21 ~~18~~ years of age or older.

563 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR  
564 NICOTINE DISPENSING DEVICES BY PERSONS UNDER 21 YEARS OF AGE  
565 ~~MINORS~~.—It is unlawful for any person under 21 ~~18~~ years of age  
566 to knowingly possess any nicotine product or a nicotine  
567 dispensing device. Any person under 21 ~~18~~ years of age who  
568 violates this subsection commits a noncriminal violation as  
569 defined in s. 775.08(3), punishable by:

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

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

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

20191618e2

581  
582 Any second or subsequent violation not within the 12-week time  
583 period after the first violation is punishable as provided for a  
584 first violation.

585 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for  
586 any person under 21 ~~18~~ years of age to misrepresent his or her  
587 age or military service for the purpose of inducing a retailer  
588 of nicotine products or nicotine dispensing devices or an agent  
589 or employee of such retailer to sell, give, barter, furnish, or  
590 deliver any nicotine product or nicotine dispensing device, or  
591 to purchase, or attempt to purchase, any nicotine product or  
592 nicotine dispensing device from a person or a vending machine.  
593 Any person under 21 ~~18~~ years of age who violates this subsection  
594 commits a noncriminal violation as defined in s. 775.08(3),  
595 punishable by:

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

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

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

607  
608 Any second or subsequent violation not within the 12-week time  
609 period after the first violation is punishable as provided for a

20191618e2

610 first violation.

611 (8) PENALTIES FOR PERSONS UNDER 21 YEARS OF AGE ~~MINORS~~.—

612 (a) A person under 21 ~~18~~ years of age cited for committing  
613 a noncriminal violation under this section must sign and accept  
614 a civil citation indicating a promise to appear before the  
615 county court or comply with the requirement for paying the fine  
616 and must attend a school-approved anti-tobacco and nicotine  
617 program, if locally available. If a fine is assessed for a  
618 violation of this section, the fine must be paid within 30 days  
619 after the date of the citation or, if a court appearance is  
620 mandatory, within 30 days after the date of the hearing.

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

631 (c) If a person under 21 ~~18~~ years of age is found by the  
632 court to have committed a noncriminal violation under this  
633 section and that person has failed to complete community  
634 service, pay the fine as required by paragraph (6) (a) or  
635 paragraph (7) (a), or attend a school-approved anti-tobacco and  
636 nicotine program, if locally available, the court must direct  
637 the Department of Highway Safety and Motor Vehicles to withhold  
638 issuance of or suspend the driver license or driving privilege

20191618e2

639 of that person for 30 consecutive days.

640 (d) If a person under 21 ~~18~~ years of age is found by the  
641 court to have committed a noncriminal violation under this  
642 section and that person has failed to pay the applicable fine as  
643 required by paragraph (6) (b) or paragraph (7) (b), the court must  
644 direct the Department of Highway Safety and Motor Vehicles to  
645 withhold issuance of or suspend the driver license or driving  
646 privilege of that person for 45 consecutive days.

647 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all  
648 civil penalties received by a county court pursuant to  
649 subsections (6) and (7) shall be remitted by the clerk of the  
650 court to the Department of Revenue for transfer to the  
651 Department of Education to provide for teacher training and for  
652 research and evaluation to reduce and prevent the use of tobacco  
653 products, nicotine products, or nicotine dispensing devices by  
654 children. The remaining 20 percent of civil penalties received  
655 by a county court pursuant to this section shall remain with the  
656 clerk of the county court to cover administrative costs.

657 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE  
658 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

663

664 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING  
665 DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST  
666 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

667

20191618e2

668 (b) A retailer that sells nicotine products or nicotine  
669 dispensing devices shall provide at the checkout counter in a  
670 location clearly visible to the retailer or the retailer's agent  
671 or employee instructional material in a calendar format or  
672 similar format to assist in determining whether a person is of  
673 legal age to purchase nicotine products or nicotine dispensing  
674 devices. This point of sale material must contain substantially  
675 the following language:

676

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

681

682 In lieu of a calendar a retailer may use card readers, scanners,  
683 or other electronic or automated systems that can verify whether  
684 a person is of legal age to purchase nicotine products or  
685 nicotine dispensing devices.

686 (11) SELF-SERVICE MERCHANDISING PROHIBITED.—

687 (a) A retailer that sells nicotine products or nicotine  
688 dispensing devices may not sell, permit to be sold, offer for  
689 sale, or display for sale such products or devices by means of  
690 self-service merchandising.

691 (b) A retailer that sells nicotine products or nicotine  
692 dispensing devices may not place such products or devices in an  
693 open display unit unless the unit is located in an area that is  
694 inaccessible to customers.

695 (c) Paragraphs (a) and (b) do not apply to an establishment  
696 that prohibits persons under 21 ~~18~~ years of age on the premises.

20191618e2

697 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS  
698 OR NICOTINE DISPENSING DEVICES.—

699 (a) In order to prevent persons under 21 ~~18~~ years of age  
700 from purchasing or receiving nicotine products or nicotine  
701 dispensing devices, the sale or delivery of such products or  
702 devices is prohibited, except:

703 1. When under the direct control, or line of sight where  
704 effective control may be reasonably maintained, of the retailer  
705 of nicotine products or nicotine dispensing devices or such  
706 retailer's agent or employee; or

707 2. Sales from a vending machine are prohibited under  
708 subparagraph 1. and are only permissible from a machine that is  
709 equipped with an operational lockout device which is under the  
710 control of the retailer of nicotine products or nicotine  
711 dispensing devices or such retailer's agent or employee who  
712 directly regulates the sale of items through the machine by  
713 triggering the lockout device to allow the dispensing of one  
714 nicotine product or nicotine dispensing device. The lockout  
715 device must include a mechanism to prevent the machine from  
716 functioning, if the power source for the lockout device fails or  
717 if the lockout device is disabled, and a mechanism to ensure  
718 that only one nicotine product or nicotine dispensing device is  
719 dispensed at a time.

720 (b) Paragraph (a) does not apply to an establishment that  
721 prohibits persons under 21 ~~18~~ years of age on the premises.

722 (c) A retailer of nicotine products or nicotine dispensing  
723 devices or such retailer's agent or employee may require proof  
724 of age of a purchaser of such products or devices before selling  
725 the product or device to that person.

20191618e2

726

Section 15. This act shall take effect October 1, 2019.