

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 7089 PCB HMR 20-04 Nicotine Products

SPONSOR(S): Judiciary Committee and Health Market Reform Subcommittee, Toledo and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/810

FINAL HOUSE FLOOR ACTION: 99 Y's 17 N's **GOVERNOR'S ACTION:** Vetoed

SUMMARY ANALYSIS

CS/HB 7089 passed the House on March 11, 2020, as CS/CS/CS/SB 810 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 12, 2020.

The bill:

- Increases the minimum age from 18 years of age to 21 years of age to lawfully purchase and possess tobacco products, nicotine products, and vapor-generating electronic devices.
- Repeals exceptions to the minimum age requirements that allow persons in the military and emancipated minors to possess or purchase tobacco products.
- Maintains the exception to the minimum age requirements that allows persons acting within the scope of their lawful employment to handle tobacco products.
- Prohibits smoking and vaping by any person under 21 years of age on or near school property.
- Increases the age from 18 years of age to 21 years of age to obtain a retail tobacco products dealer permit, a cigarette wholesaler permit, a cigarette distributor permit, or a cigarette manufacturer permit.
- Amends the definition of "tobacco products" to include nicotine products, vapor-generating electronic devices, and substances for use in a vapor-generating electronic device, which will require businesses that sell such products to obtain a retail tobacco products dealer permit.
- Creates a limited retail tobacco products dealer permit which allows a retailer to choose to sell only nicotine products and vapor-generating electronic devices, but not other tobacco products, without having to pay the annual fee for the full retail tobacco products dealer permit.
- Limits the sale of tobacco products through a vending machine to a location that prohibits persons under 21 years of age on the premises.
- Requires age verification before a sale or delivery of a tobacco product to a person under 30 years of age.
- Requires a two-step age verification for sales and deliveries of vapor-generating electronic devices and liquid nicotine products that are not conducted under the direct control or line of sight of the retailer.
- Prohibits the sale of flavored liquid nicotine products (other than tobacco or menthol flavors), and provides an exception for such products if the U.S. Food and Drug Administration issues a marketing order to permit the product to be sold.
- Adds anti-vaping education as an option for persons under 18 years of age that are charged with under-age violations relating to the purchase or possession of nicotine products.

The effective date of this bill was January 1, 2021; however, this bill was vetoed by the Governor on September 8, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the U.S. Food and Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products to protect the public health. The Tobacco Control Act provides advertising and labeling guidelines, provides standards for tobacco products, and requires face-to-face transactions for tobacco sales with certain exceptions.¹

On August 8, 2016, the FDA extended the definition of “tobacco product[s]” regulated under the Act to include electronic nicotine delivery systems (ENDS). ENDS include e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers and electronic pipes. Additionally, the definition of tobacco products includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers.

Federal law requires that a retailer may sell cigarettes and smokeless tobacco only in “direct, face-to-face exchanges between the retailer and the customer.” This language explicitly prohibits vending machines and self-service displays.² This language is referred to in the industry as the “behind the counter” language; however, this does not specifically require that a retailer place cigarettes or smokeless tobacco behind the counter. A locked display case would likely meet the self-service display prohibition. Facilities that prohibit minors under the age of 18 are exempted from this federal requirement. Retailers are also required to check a purchaser’s ID unless the purchaser is over the age of 30.³

Federal law preempts states from providing additional or different requirements for tobacco products in regards to “standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.” However, federal law explicitly preserves the right of states, or any political subdivision of a state, to enact laws, rules, regulations or other measures related to prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of tobacco products which are more stringent than federal requirements.⁴

Marketing Orders

The Tobacco Control Act requires any manufacturer wishing to market a new tobacco product, including ENDS, that was not commercially marketed on or before February 1, 2007, to obtain a marketing order from the FDA. An application for a marketing order must include:⁵

- A summary of any health information related to the tobacco product or a statement that such information will be made available upon request;
- Full reports of the health risks of the tobacco product, published or known to, or which should reasonably be known to, the applicant;
- A full statement of what is in the product, i.e. the components, ingredients, additives, and properties, and of the principle or principles of operation, of the tobacco product;
- A full description of the manufacturing and processing methods, and, when relevant, packing and installation of, the tobacco product;

¹ Federal Food, Drug, and Cosmetic Act, 21 USC § 351 et seq; 15 U.S.C. s. 1333, s. 1335; 21 U.S.C. s. 387g, s. 387f.

² 21 C.F.R. § 1140.14.

³ *Id.*

⁴ 21 U.S.C. § 387p.

⁵ 21 U.S.C. §387j; FDA *Section 910 of the Federal Food, Drug, and Cosmetic Act - Application for Review of Certain Tobacco Products*, <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/section-910-federal-food-drug-and-cosmetic-act-application-review-certain-tobacco-products> (last visited Mar. 19, 2020).

- A reference to any applicable tobacco product standard under the Tobacco Control Act, and information to show that the tobacco product meets such standard or information to justify any deviation from such standard;
- Samples and components of the tobacco product;
- Examples of the labeling proposed to be used for the tobacco product; and
- Any other information relevant to the subject matter of the application as the FDA may require.

A marketing order is not required for a new tobacco product that the FDA has:⁶

- Determined is substantially equivalent⁷ to a tobacco product that was marketed on or before February 1, 2007;
- Determined is a legally marketed tobacco product that has had a minor change by either adding or removing a tobacco additive, or by increasing or decreasing the quantity of an existing tobacco additive; or
- Issued a modified risk tobacco product order for the tobacco product, which means that the tobacco product is sold or distributed to reduce the harm or the risk of tobacco-related disease associated with tobacco products.

The FDA must approve or deny an application for a marketing order within 180 days of receiving a completed application.⁸ The FDA may deny an application if the FDA determines:⁹

- that marketing the new tobacco product would not be appropriate for the protection of public health;¹⁰
- the methods used for manufacturing, processing, or packing the tobacco product do not align with good manufacturing practices;
- the proposed labeling of the tobacco product is false or misleading; or
- the tobacco product does not conform with regulations specifying tobacco product standards.

When the FDA extended the definition of tobacco products to include ENDS, the FDA gave manufacturers until August 2022 to file applications for marketing orders for ENDS that were on the market on August 8, 2016. However, several public health groups, including the American Academy of Pediatrics and Campaign for Tobacco-Free Kids, filed a lawsuit challenging the August 2022 deadline. In May 2019, the U.S. District Court for Maryland ruled in favor of the public health organizations, and in July 2019, imposed a 10-month deadline for application submissions for all ENDS (i.e., May 2020) and a one-year deadline to obtain approval from the FDA (i.e., May 2021).¹¹ In April 2020, the Court approved a motion by the FDA to extend the deadline for application submissions by 120 days (i.e., September 2020) because of COVID-19.¹²

Tobacco 21

In 2013, the FDA contracted with the Institute of Medicine (IOM) to conduct a study to better understand the potential health benefits of raising the minimum age to purchase tobacco. In 2015, the

⁶ 21 U.S.C. §387j; 21 U.S.C. § 387k.

⁷ 21 U.S.C. §387j (“Substantially equivalent” means the tobacco product has the same characteristics (the materials, ingredients, design, composition, heating source, or other features) as another tobacco product, or the tobacco product has different characteristics that do not raise different questions of public health.)

⁸ 21 U.S.C. §387j; FDA, *Premarket Tobacco Product Applications for Electronic Nicotine Delivery Systems Guidance for Industry*, pg. 18 June 2019 <https://www.fda.gov/media/127853/download> (last visited Mar. 19, 2020).

⁹ 21 U.S.C. §387j.

¹⁰ 21 U.S.C. §387j (When determining whether marketing a new tobacco product would be appropriate for the protection of the public health, the FDA must take into account the increased or decreased likelihood that existing users of tobacco products will stop using such products; and the increased or decreased likelihood that those who do not use tobacco products will start using such products.)

¹¹ Congressional Research Service, *FDA Regulation of Tobacco Products: Updated February 10, 2020*, <https://fas.org/sqp/crs/misc/R45867.pdf> (last visited Mar. 19, 2020).

¹² FDA, *Perspective: FDA’s Preparations for the September 9 Submission Deadline*, https://www.fda.gov/tobacco-products/ctp-newsroom/perspective-fdas-preparations-september-9-submission-deadline?utm_source=CTPTwitter&utm_medium=social&utm_campaign=ctp-pmtadecadline (last visited Sept. 9, 2020).

IOM published their report and it was submitted to Congress, which concluded that raising the minimum age to purchase tobacco to 21:¹³

- Would most likely lead to substantial reduction in smoking related mortality, and
- Could result in significant health benefits for those born between 2000 and 2018, including:
 - approximately 223,000 fewer premature deaths,
 - 50,000 fewer deaths from lung cancer; and
 - 4.2 million fewer years of life lost.

The report also concluded that the age group most affected by increasing the minimum age to purchase tobacco products to 21 would be those who are age 15 to 17 years old. Because 21 year olds are less likely than 18 year olds to be in the same social circles of 15-17 year olds, increasing the minimum age would likely result in 15 to 17 year olds having less access to tobacco products and delaying the age that a person is first exposed to tobacco.¹⁴

According to the report, delaying the date a person uses a tobacco product is critical because the adolescent brain is uniquely vulnerable to nicotine and adolescents are particularly susceptible to peer pressure. Delaying the age a person is first exposed to tobacco will likely decrease the prevalence of tobacco users.¹⁵

The FDA also reports that between 2011 and 2014, the number of high school students who had used an e-cigarette in the last 30 days increased nearly 800 percent, with 13.4 percent of high school students reporting usage in 2014.¹⁶ In 2018, over 4.9 million middle and high school students were current users of e-cigarettes.¹⁷ As of 2018, more than one in four high school seniors and one in ten middle school students used e-cigarettes.¹⁸ In 2019, among middle and high school students, over 5 million were current users of e-cigarettes, and almost 1 million were using e-cigarettes daily.¹⁹

In order to decrease youth usage of ENDS, the FDA has begun a Youth Tobacco Prevention Plan. The plan has three main components: preventing youth access to tobacco products, ending marketing aimed at youth, educating youth about the dangers of using tobacco and educating retailers about their role in preventing underage usage of tobacco.²⁰

Federal Minimum Age to Purchase Tobacco Products

On December 20, 2019, the Tobacco Control Act was amended to raise the federal minimum age of the sale of tobacco products, including ENDS, from 18 to 21 years.²¹ The law was also changed to require retailers to check a purchaser's ID unless the purchaser is 30 years or older, instead of if the purchaser is over 26. The law became effective on January 15, 2020, with the FDA announcing that retailers may no longer sell tobacco products to anyone under the age of 21.²² Prior to the enactment of

¹³ Institute of Medicine, *Public Health Implications Raising the Minimum Age of Legal Access to Tobacco Products Report Brief*, (March http://www.nationalacademies.org/hmd/~media/Files/Report%20Files/2015/TobaccoMinAge/tobacco_minimum_age_report_brief.pdf (last visited on Jan. 27, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ FDA, 81 C.F.R. 28973, <https://www.federalregister.gov/d/2016-10685/p-635> (last visited Mar. 22, 2019).

¹⁷ FDA, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new data demonstrating rising youth use of tobacco products and the agency's ongoing actions to confront the epidemic of youth e-cigarette use*, <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco> (last visited Mar. 20, 2020).

¹⁸ *Id.*

¹⁹ FDA, *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)*, <https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends> (last visited Mar. 20, 2020).

²⁰ Food and Drug Administration, *FDA's Youth Tobacco Prevention Plan*, <https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm608433.htm> (last visited Mar. 20, 2020).

²¹ *Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21*, United States Food and Drug Administration, (Jan. 15, 2020) <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21> (last visited Mar. 20, 2020).

²² *Id.*

this amendment the FDA used minors to ensure that retailers were complying with the law. However, the FDA has begun using persons under the age of 21 for compliance checks.²³

The federal government does not require states to enforce the federal minimum age, but states that do not demonstrate that their retailers are complying with the federal minimum age are subject to a possible reduction in funding for Substance Abuse Prevention and Treatment Block Grants.²⁴ Substance Abuse and Prevention and Treatment Block Grants are administered by the U.S. Department of Health and Human Services, and are federal funds provided to the states to prevent substance abuse.²⁵ However, the federal government will not reduce a block grant for failing to enforce the federal minimum age for at least three years.²⁶

According to news reports, the recent increase in the federal minimum age is causing confusion among retailers in states where the minimum age is still 18 years of age. Retailers are not sure which law they are required to follow, which may lead to one retailer enforcing the state minimum age and another retailer enforcing the federal minimum age.²⁷

Jurisdictions that Raised the Minimum Age from 18 to 21

Nineteen states, and the U.S. Territory of Guam, have passed legislation raising the minimum age for a person to lawfully possess or purchase tobacco products and nicotine products to 21 years of age:²⁸

- Arkansas;
- California;
- Connecticut;
- Delaware;
- Hawaii;
- Illinois;
- Maine;
- Maryland;
- Massachusetts;
- New Jersey;
- New York;
- Ohio;
- Oregon;
- Pennsylvania (effective July 1, 2020);
- Texas;
- Utah (effective July 1, 2021);
- Vermont;
- Virginia; and
- Washington.

²³ FDA, *Tobacco 21*, (Fe. 12, 2020) <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21> (last visited Mar. 20, 2020).

²⁴H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26.

²⁵ USDHHS, Substance Abuse Prevention and Treatment Block Grant, <https://www.samhsa.gov/grants/block-grants/sabg> (last visited Jan. 27, 2020)

²⁶ H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26.

²⁷ Adam Kurtz, *New Tobacco 21 law causes confusion about enforcement, start date*, Grand Forks Herald (Jan. 10, 2020) <https://www.grandforksherald.com/business/retail/4853919-New-Tobacco-21-law-causes-confusion-about-enforcement-start-date> (last visited Mar. 20, 2020); Naomi Kowles, *Some local confusion after federal passage of new minimum age for tobacco purchases*, WSAW-TV (Jan. 16, 2020) <https://www.wsaw.com/content/news/Some-local-confusion-after-federal-passage-of-new-minimum-age-for-tobacco-purchases-567056371.html> (last visited Mar. 20, 2020).

²⁸ See Campaign for Tobacco-Free Kids, *States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21*, available at <https://www.tobaccofreekids.org/what-we-do/us/sale-age-21> (last visited Mar. 19, 2020);

At least 540 localities, including New York City, Chicago, San Francisco, San Antonio, Boston, Cincinnati, Cleveland, Columbus, and Kansas City (in Kansas and Missouri), plus Washington, D.C., have also raised the minimum age to 21.²⁹

In January of 2019, Alachua County became the first local government in Florida to raise the minimum legal age to purchase tobacco to 21 years of age. The Alachua County ordinance applies to tobacco products, nicotine products, and vapor-generating electronic devices. Municipalities in the county are authorized to opt out of the ordinance if they choose. In addition, retailers are required to purchase and maintain a special license to sell tobacco, nicotine products, vapor-generating electronic devices. Businesses located within 1,000 feet of a public school are prohibited from licensure; however, businesses previously licensed to sell tobacco products by the state are grandfathered in. Penalties for violations include license suspensions ranging from seven days up to losing the license permanently for four violations in a 24-month period.³⁰

In September of 2019, Fort Lauderdale became the second local government in Florida to raise the minimum age to purchase tobacco to 21. The Fort Lauderdale ordinance applies to tobacco products, nicotine products, and vapor-generating electronic devices. Penalties for violations include warnings and civil citations ranging from \$500 to \$1,000. Fort Lauderdale will not enforce the ordinance until March 2020.³¹

Private Sector

Recently, members of the nicotine product manufacturing industry indicated support for increasing the minimum age to purchase tobacco products, including nicotine products, and vapor-generating electronic devices, from 18 to 21. Juul Labs, the largest e-cigarette company, stated that they support raising the minimum age to purchase tobacco products, nicotine products, and vapor-generating electronic devices from 18 to 21. One of Juul Labs' ads states:³²

“It’s time to raise the legal age to purchase tobacco products, including vapor, from 18 to 21. Because when youth never start smoking and vaping, they never have to stop.”

²⁹ *Id.*

³⁰ Alachua County Ord. No. 2019-04.

³¹ City of Fort Lauderdale Ord. No C-19-21.

³² Juul Labs, *Our Support For T21 Laws*, <https://newsroom.juul.com/t21/> (last visited Mar. 20, 2020).

Flavored Nicotine Products

The FDA announced that beginning in February 2020, it would specifically begin enforcing the marketing order requirement for all flavored based cartridge ENDS,³³ except tobacco and menthol flavored.³⁴

The FDA's reasoning for enforcing the marketing order requirements for cartridge based flavored ENDS is because of the widespread use of flavored cartridge based ENDS by middle school and high school students. The FDA concluded that youths prefer sweet flavors as opposed to bitter, and flavors such as fruit and candy vaping products are used to attract new users, specifically youth.³⁵

In addition to enforcing the marketing order requirement for all flavored based cartridge ENDS, the FDA also announced that it would enforce the marketing order requirement for all other ENDS products where the manufacturer has failed or is failing to take adequate measures to prevent minors' access, or whose marketing it targeted to, or likely to promote use by, minors.³⁶

Seven states have issued executive orders or emergency rules banning the sale of flavored nicotine products; however, only two are in effect.³⁷

- Michigan;
- Montana;
- New York;
- Oregon;
- Rhode Island (in effect);
- Utah; and
- Washington (in effect).

Massachusetts has passed a law that limits the sale and use of flavored nicotine products to within licensed smoking bars. The law takes effects June 1, 2020.³⁸

New Jersey has passed a law that bans the sale of flavored nicotine products, which takes effect on April 20, 2020.³⁹

At least 260 localities, including New York City, Philadelphia, San Francisco, and Los Angeles County have passed restrictions on the sale of flavored tobacco products including nicotine products; however, the laws differ in their application to specific products and store types.⁴⁰

Proponents of bans on certain flavors and other nicotine products as well as other regulations for nicotine products argue that raising the minimum age to purchase tobacco and nicotine products is not

³³ "Cartridge based ENDS" are a type of ENDS that consists of, includes, or involves a small enclosed unit (cartridge or pod) that holds liquid and is designed to fit within or operate as part of an ENDS. Cartridge based ENDS does not include products such as disposable ENDS or ENDS with open tank systems. FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization Guidance for Industry*, Jan. 2020 <https://www.fda.gov/media/133880/download> (last visited Mar. 19, 2020).

³⁴ *Id.*

³⁵ *Id.* FDA, 83 FR 12294 <https://www.federalregister.gov/documents/2018/03/21/2018-05655/regulation-of-flavors-in-tobacco-products> (last visited Jan. 27, 2020).

³⁶ *Id.*

³⁷ See Campaign for Tobacco-Free Kids, *States & Localities that have restricted the sale of flavored tobacco products*, <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf> (last visited Mar. 19, 2020).

³⁸ Massachusetts Department of Public Health, *2019 Tobacco Control Law*, <https://www.mass.gov/guides/2019-tobacco-control-law#-new-tobacco-control-law-> (last visited Mar. 20, 2020).

³⁹ Senate, No. 3265 Electronic Smoking Devices, State of New Jersey (218th Legislature); Amanda Hoover, *Flavored vaping products will soon be banned in N.J. as Murphy signs law*, NJ.com (Jan. 21, 2020) <https://www.nj.com/politics/2020/01/flavored-vaping-products-will-soon-be-banned-in-nj-as-murphy-signs-law.html> (last visited Mar. 20, 2020).

⁴⁰ Campaign for Tobacco-Free Kids, *supra*, note 34.

enough and additional regulations are needed to ensure youths do not have access to tobacco and nicotine products.⁴¹

Opponents of bans on certain flavors of nicotine products and other regulations argue that over regulation of the industry could end up destroying the industry, and may cause adults, who use nicotine and vaping products as a cessation method, to go back to smoking or using unregulated products on the black market.⁴²

E-Cigarette, or Vaping, Product Use-Associated Lung Injury (EVALI)

As of January 14, 2020, there have been 2,668 cases of EVALI and sixty deaths in the United States. 113 of the cases and two of the deaths have been in Florida. According to the Centers for Disease Control (CDC), tetrahydrocannabinol (THC) and Vitamin E acetate are strongly linked to the outbreak of EVALI. The CDC and FDA recommend that people not use THC-containing vaping products, particularly products from informal sources like friends, family, or in-person or online dealers.⁴³

Symptoms of the lung injury include:⁴⁴

- Cough, shortness of breath, or chest pain;
- Nausea, vomiting, or diarrhea; and
- Fatigue, fever, or abdominal pain.

The CDC has the following data on the age and sex of 2,668 of the cases:⁴⁵

- 66% of the patients are male;
- The median age of patients is 24 years old and ranges from 13-85 years. However, 76% of the patients are under 35 years old;
- By age group category:
 - 15% of patients are under 18 years old;
 - 37% of patients are 18 to 24 years old;
 - 24% of patients are 25 to 34 years old; and
 - 24% of patients are 35 years or older.

Regulation of Tobacco Products in Florida

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of the tobacco products under ch. 569, F.S. "Tobacco products" include loose 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.⁴⁶

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" differently as "loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps;

⁴¹ Merrit Kennedy, *Why Tobacco Industry Giants Backed Raising The Minimum Age Of Purchase*, NPR (Dec. 23, 2019) <https://www.npr.org/sections/health-shots/2019/12/23/790190858/why-tobacco-industry-giants-backed-raising-the-minimum-age-of-purchase> (last visited Mar. 20, 2020); Jamie Ducharme, *A Flurry of States Have Raised Their Smoking Ages. But Big Tobacco's Involvement Has Some Health Groups Uneasy*, Time (June 10, 2019) <https://time.com/5593618/vaping-tobacco-21-laws/> (last visited Mar. 20, 2020).

⁴² Christine Vestal, *The Surprising Reasons Vaping Bans Draw Pushback*, Pew Charitable Trusts (Jan. 28, 2020) <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/01/28/the-surprising-reasons-vaping-bans-draw-pushback> (last visited Mar. 20, 2020).

⁴³ CDC, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#latest-outbreak-information (last visited Feb. 7, 2020). Florida Department of Health, *Lung Injury Associated with E-Cigarette Use, or Vaping- Florida*, Florida Department of Health <http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=ChartsProfiles.LungInjuryE-CigaretteUse> (last visited Feb. 7, 2020).

⁴⁴ CDC, *For the Public*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/need-to-know/index.html (last visited Feb. 7, 2020).

⁴⁵ CDC *supra*, note 40.

⁴⁶ S. 569.002(6), F.S.

clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.”

“Tobacco products” in either definition does not include nicotine products or vapor-generating electronic devices.

Cigarette and Tobacco Products Wholesalers, Distributors, and Manufacturers

A person must obtain a permit from the Division in order to distribute tobacco products, not including cigarettes or cigars. A person must obtain a permit for each place of business. The fee for such permit is \$25. There is no minimum age requirement to obtain a permit to distribute tobacco products.⁴⁷

A person must obtain a cigarette permit from the Division in order to import, export, manufacture, deal at wholesale, or distribute cigarettes in the state. A person must obtain a permit for each place of business in the state or its principal place of business if the person does not have a business in this state. The fee for such permit is \$100. The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 18 years or older.⁴⁸

Tobacco Products Retailers

A person must obtain a retail tobacco products dealer permit from the Division for each place of business or the premises where tobacco products are sold to be eligible to sell retail tobacco products, or operate a tobacco products vending machine in Florida. The fee for such a permit is \$50.⁴⁹ The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 18 years or older.⁵⁰ The place or premises covered by a permit is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for tobacco sales and dealing.⁵¹

DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:⁵²

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and
- The number of people under the age of 18 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing tobacco products underage, and misrepresenting military service for the purpose of obtaining tobacco products underage.

Florida also has an excise tax and surcharge on cigarettes and other tobacco products, not including cigars. The tax and surcharge for cigarettes is \$0.1695 to \$0.42375 per pack and a surcharge of \$0.50 to \$1.25 per pack depending on the number of cigarettes in the pack. The excise tax for tobacco products is 25% of the wholesale price and the surcharge is 60% of the wholesale price. There is no excise tax or surcharge for nicotine products or vapor-generating electronic devices.⁵³

Requirements for Tobacco Products Retailers

Signage

⁴⁷ S. 210.40, F.S.

⁴⁸ S. 210.15, F.S.

⁴⁹ S. 569.003, F.S.

⁵⁰ S. 569.003, F.S.

⁵¹ S. 569.004, F.S.

⁵² S. 569.19, F.S.

⁵³ Ss. 210.011, 210.02, 210.276, and 210.30, F.S.; DBPR, Alcoholic Beverages & Tobacco – Tax & Reporting Information For Licensees, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/tax-and-reporting-information-for-licensees/#1510753842753-25986d10-086f> (last visited Mar. 20, 2020).

Retail tobacco products dealers (retailers) 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 retailers. Retailers 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.⁵⁴

Direct Sales

The sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the retailer or the retailer's agent or employee in order to prevent persons under 18 years of age from purchasing or receiving tobacco products. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lockout device which is under the control of the retailers or the retailer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled;
- A mechanism to ensure that only one tobacco product is dispensed at a time.⁵⁵

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.⁵⁶

If the Division determines a tobacco product retailer or a tobacco product retailer's employee violated the regulations for tobacco product retailers, the Division can suspend or revoke the retailer's permit or assess a fine up to \$1,000 for each violation.⁵⁷

If the Division discovers a tobacco product retailer's employee illegally sold tobacco products to a person under 18 years, the Division may mitigate penalties, if:

- The retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the retailer's employees comply with ch. 569, F.S., such as employee training.
- The retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- The sale was made through a vending machine equipped with an operational lock-out device.⁵⁸

Mail Order, Internet, and Other Remote Sales of Tobacco Products in Florida

Section 210.095, F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products and cigarettes, referred to as "delivery sales." Each person who mails, ships, or otherwise delivers tobacco products or cigarettes in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.

⁵⁴ S. 569.14, F.S.

⁵⁵ S. 569.007(1), F.S.

⁵⁶ S. 569.007(2) and (3), F.S.

⁵⁷ S. 569.006, F.S.

⁵⁸ See s. 569.008(3), F.S.

- Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products or cigarettes by this state with respect to the delivery sale.

Before the first delivery to a consumer, the person mailing, shipping, or delivering the tobacco products or cigarettes must also:⁵⁹

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting delivery is an adult, and a written statement under penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provides the person accepting the delivery a notice stating tobacco products are illegal for underage youths and tobacco products are taxable;
- Impose a two-carton minimum on each order of cigarettes;
- Submit to the credit card company necessary information so that the words "tobacco product" appear on the person's credit card statement when a purchase is made using a credit card;
- Make a phone call to the individual who made the order to confirm the order before shipping the order; and
- Receive payment by a credit card or debit card in the name of the person accepting delivery or a personal or company check in the name of the person, if the order is made in accordance with an advertisement on the Internet.

A person who accepts a purchase order for a delivery sale and delivers the tobacco products or cigarettes without using a delivery service must comply with all of the delivery service requirements.⁶⁰

Section 210.095(8), F.S., currently provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:⁶¹

- A delivery of tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A person under the age of 18 who knowingly violates any of the provisions of the mail order or internet sales requirements.

These provisions do not apply to nicotine products and vapor-generating electronic devices. However, it is illegal for a person to deliver nicotine products or vapor-generating electronic devices to persons under 18 years of age.⁶²

Tobacco Products and Minors

The sale, delivery, bartering, furnishing or giving of tobacco products or giving sample to products to persons under the age of 18 is prohibited.⁶³ A violation of this prohibition is a second degree

⁵⁹ *Id.*

⁶⁰ S. 210.095, F.S.

⁶¹ Section 775.082, F.S., does not provide a third degree misdemeanor. Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., does not provide a third degree misdemeanor. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁶² S. 877.112(2), F.S.

⁶³ Ss. 569.0075 and 569.101, F.S.

misdemeanor.⁶⁴ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.⁶⁵

It is a complete defense to a person charged with such a violation 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 identification upon which the person relied upon in good faith.⁶⁶

Persons under the age of 18 years are prohibited from knowingly possessing, directly or indirectly, any tobacco products. Person who violate this noncriminal violation are punishable as follows:⁶⁷

- 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 court may suspend or withhold issuance of a driver license for persons under 18 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.

However, this does not include any person under the age of 18 who:⁶⁸

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

Eighty percent of all civil penalties received from violating prohibitions related to the possession or sale of tobacco products by a county court must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children.⁶⁹ The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.⁷⁰

Nicotine Products Regulation in Florida

Section 877.112, F.S., provides for the regulation of nicotine products and vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine products and vapor-generating electronic devices to and by persons under 18 years of age.

A “nicotine product” is any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means.⁷¹ The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.⁷²

⁶⁴ S. 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁶⁵ S. 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

⁶⁶ S. 569.101(3), F.S.

⁶⁷ S. 569.11, F.S.

⁶⁸ S. 569.002(7), F.S.

⁶⁹ S. 569.11(6), F.S.

⁷⁰ *Id.*

⁷¹ S. 877.112(1)(b), F.S.

⁷² *Id.*

The sale or giving of nicotine products or vapor-generating electronic devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.⁷³ It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to be 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.⁷⁴

Persons under 18 years of age who knowingly possess, purchase, or misrepresent their age or military service to obtain nicotine products or vapor-generating electronic devices commit a noncriminal violation.⁷⁵ The penalty is 16 hours of community service or a \$25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second violation within 12 weeks of the first violation requires a \$25 fine. A court may suspend or withhold issuance of a driver's license for persons under 18 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.⁷⁶

Eighty percent of civil penalties related to the unlawful possession or sale of nicotine products are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or vapor-generating electronic devices by children.⁷⁷ The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.⁷⁸

Retail dealers of nicotine products and vapor-generating electronic devices are required to post signs indicating that the sale of nicotine products and vapor-generating electronic devices to persons under 18 years of age is prohibited and that proof of age is required for purchase. Retailers 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 nicotine product or vapor-generating electronic device.⁷⁹

Nicotine products or vapor-generating electronic devices may not be sold or displayed by means of self-service merchandising.⁸⁰ Self-service merchandising means the open display of nicotine products or vapor-generating electronic devices for direct customer access and handling before the purchase of such product without the assistance of the retailer or the retailer's employee. However, this does not apply to establishments that prohibit persons under the age of 18 on the premises.⁸¹

Laws related to nicotine products and vapor-generating electronic devices are different from tobacco laws in the following ways:

- Nicotine retailers are not required to obtain a retail tobacco products dealer permit from the Division.
- Nicotine retailers are not subject to inspection without a search warrant.
- The Division does not have authority to discipline a nicotine retailer for violating any of the regulations relating to the retail sale of nicotine products and vapor-generating electronic devices.
- The requirements for internet and remote sales of tobacco products do not apply to nicotine products or vapor-generating devices.
- There are no exemptions for the prohibition of the purchase and possession of nicotine products and vapor-generating electronic devices by persons under 18 years old, such as military service or possession of such products as part of a person's lawful scope employment.

⁷³ Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁷⁴ S. 877.112(5), F.S.

⁷⁵ Ss. 877.112(6), and (7), F.S.

⁷⁶ *Id.*

⁷⁷ S. 877.112(9), F.S.

⁷⁸ *Id.*

⁷⁹ S. 877.112(10), F.S.

⁸⁰ Ss. 877.112(11), and (12), F.S.

⁸¹ *Id.*; S. 877.112(1), F.S.

Florida Clean Indoor Air ACT (FCIAA)

The FCIAA, implements Article X, Section 20 of the Florida Constitution. Article X, Section 20 of the Florida Constitution prohibits a person from smoking tobacco or using a vapor-generating electronic device, vaping, in an enclosed indoor workplace, with certain exceptions.

Article X, Section 20 of the Florida Constitution defines “vapor-generating electronic device” as any product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including but not limited to:

- An electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product;
- Any replacement cartridge for such device; or
- Any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

The FCIAA also prohibits any person under the age of 18 from smoking tobacco or vaping within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.⁸²

Effect of the Bill

Retail Sale of Nicotine Products and Vapor-Generating Electronic Devices

The bill establishes state regulatory oversight for retailers of nicotine products and vapor-generating electronic devices by amending the definition of “tobacco products” to include nicotine products and vapor-generating electronic devices for purposes of the sale of tobacco products at retail.

Retailers who sell nicotine products and vapor-generating electronic devices will be required to obtain a retail tobacco products dealer permit from the Division, and be subject to searches and inspections without a warrant by the Division and law enforcement. The Division will also have authority to discipline a nicotine product or vapor-generating electronic device retailer who violates any of the regulations relating to the retail sale of tobacco products.

The bill defines “nicotine products” as any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes vapor-generating electronic devices.

The bill defines “vapor-generating electronic device” as any product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to:

- An electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product;
- Any replacement cartridge for such device;
- Any component, part, or accessory of such device; and
- Any other container of nicotine in a solution or other substance form intended to be used with or within an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vape pen, an electronic hookah, or other similar device or product.

The term also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.

⁸² S. 386.212, F.S.

Nicotine products and vapor-generating electronic devices do not include:

- Loose tobacco leaves, and products made from tobacco leaves, and cigarette wrappers, which can be used for smoking, sniffing, or chewing;
- Products regulated as a drug or device by the FDA; or
- Foods that contain incidental amounts of nicotine including, but not limited to, tomatoes, potatoes, eggplants, and cauliflower.

The bill also creates a limited retail tobacco products dealer permit for retailers who choose to sell only nicotine products and vapor-generating electronic devices. Retailers with a limited retail tobacco products dealer permit are not required to pay the \$50 fee for the permit, and the Division may not fix or assess a fee for such a permit. However, in order to sell all types of tobacco products (tobacco products made from tobacco leaves, nicotine products, and vapor-generating electronic devices) at retail, a person must pay the \$50 fee for the permit.

The bill **does not** impose an excise tax or surcharge on nicotine products and vapor-generating electronic devices or require distributors of such products to obtain a permit from DBPR. The bill also does not apply the regulations for the mail order, internet, and the remote sales of tobacco products to nicotine products and vapor-generating electronic devices.

The bill repeals s. 877.112, F.S., which currently regulates nicotine products in this state.

Tobacco 21

The bill increases the minimum age to lawfully purchase and knowingly possess tobacco products, nicotine products, and vapor-generating electronic devices in Florida from 18 years old to 21 years old.

The bill:

- Prohibits the sale, delivery, bartering, furnishing, shipping, or giving tobacco products, nicotine products, or vapor-generating electronic devices to persons under the age of 21.
- Provides that anyone under the age of 21 commits a noncriminal penalty for knowingly possessing tobacco products, nicotine products, or vapor-generating electronic devices.
- Provides that anyone under the age of 18 who is cited for knowingly possessing tobacco products, nicotine products, or vapor-generating electronic devices must attend a school approved anti-tobacco or anti-vaping program.
- Provides that anyone under the age of 21 commits a criminal offense for knowingly violating any of the requirements for remote sales of tobacco products and cigarettes.
- Provides that no person under the age of 21 may use tobacco products or vape within 1,000 feet of a school at anytime, instead of no person under 18 may use tobacco products or vape between 6 a.m. and midnight.
- Increases the age from 18 years of age to 21 years of age to obtain a retail tobacco products dealer permit, or a cigarette permit.
- Raises the age that a person, who is accepting a delivery of tobacco products, is not required to provide proof of their age from 27 years of age to 30 years of age.
- Removes the following exemptions to the minimum age requirements that allow certain persons under the minimum age to possess or purchase tobacco products:
 - A person who is in the military reserve or on active duty in the Armed Forces of the United States;
 - A person who has had his or her disability of nonage removed under ch. 743, F.S; and
 - A person who is emancipated by a court of competent jurisdiction and released from parental care and responsibility.
- Maintains the exemption to the minimum age requirements that allows persons under the minimum age to handle tobacco products if the person is acting within the scope of their lawful employment with an entity who has received any type of tobacco products or cigarette permit from the Division, and extends this exemption to the minimum age requirements for nicotine products and vapor-generating electronic devices.

- Requires retailers of tobacco products, nicotine products, and vapor-generating electronic devices to check a purchaser's ID unless the purchaser is over the age of 29.
- Limits the sale of tobacco products, nicotine products, and vapor-generating electronic devices in vending machines to establishments that prohibit persons under 21.

Sales and Deliveries of Liquid Nicotine Products and Vapor-Generating Electronic Devices

The bill creates a two-step age verification for sales and deliveries of liquid nicotine products⁸³ and vapor-generating electronic devices that are not conducted under the direct control or line of sight of the retailer.

Step one requires verification that the purchaser is at least age 21 before accepting an order for delivery by using a commercially available database, or an aggregate of databases, which is regularly used for age identification and identity verification.

Step two requires a signature of the purchaser upon delivery, and verification that the credit or debit card used for the purchase is issued to the purchaser and the delivery address is associated with the credit or debit card.

Flavored Liquid Nicotine Products

The bill prohibits any person from selling, delivering, bartering, or giving flavored liquid nicotine products, except menthol or tobacco flavored, to any other person. However, this does not apply to the sale, shipment, or transport of any flavored liquid nicotine product that has received a marketing order from the FDA.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On April 12, 2019, the Revenue Estimating Impact Conference reviewed HB 7119 of the 2019 Florida Legislative Session. Similar to HB 7089, HB 7119 (2019) also increased the minimum age to purchase tobacco, nicotine products, and vapor-generating electronic devices to 21 years of age. The Revenue Estimating Impact Conference estimated it will result in a reduction in Tobacco Tax and Surcharge collections. The following chart shows the impact over the next five fiscal years (in millions):⁸⁴

⁸³ The bill defines "liquid nicotine product" as a tobacco product in liquid form composed of nicotine and other chemicals or substances which is sold or offered for sale for use with vapor-generating electronic device.

⁸⁴ Office of Economic & Demographic Research, April 12, 2019 Revenue Estimating Conference (<http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/pdf/Impact0412.pdf>).

Fiscal Year	General Revenue	Trust Fund	Total
2019-20	\$ (0.4)	\$ (1.1)	\$ (1.6)
2020-21	\$ (0.6)	\$ (1.7)	\$ (2.3)
2021-22	\$ (0.9)	\$ (2.2)	\$ (3.1)
2022-23	\$ (1.1)	\$ (2.8)	\$ (3.9)
2023-24	\$ (1.1)	\$ (2.8)	\$ (3.9)

2. Expenditures:

The bill has a significant, indeterminate, negative fiscal impact on DBPR. The bill creates new duties of the Division relating to the regulation and enforcement of nicotine products and sales which will increase current workload on Division employees. The impact is indeterminate because the number of current retailers who sell nicotine products is unknown as they are not currently regulated by any state agency. DBPR estimates that it will need an additional \$105,846 in non-recurring funds and \$269,432 in recurring funds, which will be used in part to pay for three additional full-time equivalent (FTE) positions.⁸⁵

There may be an indeterminate positive fiscal impact on the state due to a possible reduction in treatment of smoking and vaping related illnesses and diseases related to people who would receive services from a government program (e.g., Medicaid).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses will no longer be able to sell tobacco products, nicotine products, and vapor-generating electronic devices to persons who are older than 18 but younger than 21. Individuals who are older than 18 but younger than 21 will no longer be able to purchase such until they reach the age of 21.

Businesses that sell flavored liquid nicotine products, except tobacco and menthol flavored, will need to obtain a marketing order from the FDA in order to continue selling such products. The cost to gather and submit all the required information that must accompany the application is unknown.

D. FISCAL COMMENTS:

None.

⁸⁵ Florida Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill PCB-HMR 20-04, p. 13 (Feb. 12, 2020).