

THE FLORIDA SENATE
2020 SUMMARY OF LEGISLATION PASSED
Committee on Health Policy

CS/CS/CS/SB 810 — Tobacco and Nicotine Products

by CS/CS/CS/SB 810 — Tobacco and Nicotine Products

by Appropriations Committee; Innovation, Industry and Technology Committee; Health Policy Committee; and Senators Simmons, Flores, and Mayfield

The bill, consistent with federal law enacted in December 2019, increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age. The bill also expands the regulations of the retail sale of tobacco products by the Division of Alcoholic Beverages and Tobacco (the division) of the Department of Business and Professional Regulation to include vapor-generating electronic devices and nicotine products.

The bill modifies or adds the following definitions:

- Expands the preexisting definition of “tobacco products” to include “any nicotine product or vapor-generating electronic device.”
- Defines “nicotine product” 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 includes vapor-generating electronic devices.
- 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; 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 includes any component, part, or accessory of the device and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.
- 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 a vapor-generating electronic device.
- Provides that the terms “vapor-generating electronic device” and “nicotine product” do not include:
 - o Tobacco products as defined under preexisting law, i.e. traditional tobacco leaf-based products and cigarette wrappers;
 - o Products regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or
 - o Foods that contain incidental amounts of nicotine including, but not limited to, tomatoes, potatoes, eggplants, and cauliflower.

The bill modifies and adds the following permitting structure for the retail sale of tobacco products:

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- Authorizes the division to issue a limited retail tobacco products dealer permit to an applicant only dealing, at retail, in liquid nicotine products, nicotine products, or vapor-generating electronic devices, or a combination thereof. The bill prohibits the division from assessing an annual permit fee for this limited permit.
- Prohibits a retailer with a limited permit from dealing, at retail, in tobacco products as defined under preexisting law, including 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.
- Provides that any retailer that pays the annual permit fee for a retail tobacco products dealer permit may deal, at retail, in all tobacco products.

Regarding the retail sale of tobacco products, the bill:

- Prohibits the sale, delivery, bartering, furnishing, or giving, directly or indirectly, of flavored nicotine products to any person, regardless of age. Defines the term “flavored nicotine product” means a liquid nicotine product containing a natural or artificial constituent or additive that causes the liquid or its vapor to have a distinguishable taste or aroma other than tobacco or menthol, including, but not limited to, fruit, chocolate, vanilla, honey, candy, cocoa, a dessert, an alcoholic beverage, an herb or a spice, or any combination thereof. Provides an exception for products if the U.S. Food and Drug Administration issues a marketing order allowing such product to be sold.
- Maintains the preexisting age-verification requirements for tobacco products sold and delivered by mail order, Internet, or other remote sales while prohibiting deliveries to persons younger than 21 years of age. In this context, “tobacco products” means all cigarettes, smoking tobacco, snuff, fine-cut chewing tobacco, cut and granulated tobacco, Cavendish, and plug or twist tobacco.”
- Maintains the preexisting exemption that allows a person acting within their scope of his or her lawful employment to possess tobacco products, even if under the age of 21.
- 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 retail dealer.
- Eliminates exemptions allowing underage persons in the military and emancipated minors to possess and purchase tobacco products consistent with federal law.
- Requires age verification before a sale or delivery of tobacco products to a person under 30 years of age, as required by the federal law enacted in December 2019.

Regarding the penalties for violations of tobacco product restrictions, the bill:

- Prohibits smoking or vaping by any person younger than 21 years of age within 1,000 feet of public or private K-12 school property without regard to the time of day, as opposed to preexisting law that prohibits persons under 18 years of age from smoking or vaping in such locations between the hours of 6 a.m. and midnight. Maintains preexisting law regarding penalties for violating this prohibition. Any person issued a citation for the violation is deemed to be charged with a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service and, for persons under

18 years of age, successful completion of a school-approved anti-tobacco or anti-vaping “alternative to suspension” program.

- Provides that the school-approved anti-tobacco education requirement for persons under 18 years of age charged with underage violations relating to vape product purchases and possession, must also include anti-vaping education programs.
- Repeals s. 877.112, F.S., thereby eliminating the general restrictions on the sale or delivery of nicotine dispensing devices and nicotine products to persons under 18 years of age. Many of these provisions are incorporated into the provisions of ch. 569, F.S., as modified by the bill.

If approved by the Governor, these provisions take effect January 1, 2021.

Vote: Senate 27-9; House 99-17