

By Representatives Tobin and Jacobs

1 A bill to be entitled
2 An act relating to alcoholic beverages and
3 tobacco; amending s. 20.165, F.S.; authorizing
4 employees of the Division of Alcoholic
5 Beverages and Tobacco who are certified as law
6 enforcement officers to investigate, enforce,
7 and prosecute certain violations relating to
8 tobacco products; creating s. 561.707, F.S.;
9 requiring licensees under the Beverage Law to
10 exercise diligence in the management and
11 supervision of their premises and in the
12 supervision and training of their employees,
13 agents, officers, or servants; providing
14 grounds for presumption of lack of diligence;
15 amending s. 562.11, F.S.; increasing penalties
16 applicable to provision of alcoholic beverages
17 to persons under age 21 and to such persons
18 misrepresenting or misstating their age or the
19 age of another to secure alcoholic beverages;
20 amending s. 562.111, F.S.; exempting certain
21 persons from civil or criminal liability
22 relating to enforcement of the Beverage Law;
23 amending s. 569.007, F.S.; revising
24 requirements for location of vending machines
25 that offer tobacco products; amending s.
26 569.008, F.S.; requiring tobacco products
27 dealers to exercise diligent management and
28 supervision in the management and supervision
29 of their premises and in the supervision and
30 training of their employees, agents, officers,
31 or servants; amending s. 859.06, F.S.;

1 increasing the penalty applicable to providing
2 tobacco products or cigarette wrappers to
3 persons under 18 years of age; creating s.
4 859.073, F.S.; prohibiting possession of
5 cigarettes or other tobacco products by persons
6 under 18 years of age and providing penalties
7 therefor; creating s. 859.075, F.S.;
8 prohibiting free samples of cigarettes or other
9 tobacco products; providing exceptions;
10 providing penalties; creating s. 859.078, F.S.;
11 exempting certain persons from civil or
12 criminal liability relating to enforcement of
13 laws relating to cigarette wrappers,
14 cigarettes, and other tobacco products;
15 amending s. 210.04, F.S., relating to
16 construction, exemptions, and collection of the
17 tax on cigarettes, to conform; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Paragraph (b) of subsection (9) of section
23 20.165, Florida Statutes, 1996 Supplement, is amended to read:

24 20.165 Department of Business and Professional
25 Regulation.--There is created a Department of Business and
26 Professional Regulation.

27 (9)

28 (b) All employees certified under chapter 943 as law
29 enforcement officers shall have felony arrest powers under s.
30 901.15(11) and shall have all the powers of deputy sheriffs
31 to:

1 1. Investigate, enforce, and prosecute, throughout the
2 state, violations and violators of:

3 a. Parts I and II of chapter 210; part VII of chapter
4 559; chapters 561-569; and ss. 859.06-859.078 ~~s. 859.06~~ and
5 the rules promulgated thereunder, as well as other state laws
6 which the division, all state law enforcement officers, or
7 beverage enforcement agents are specifically authorized to
8 enforce.

9 b. All other state laws, provided that the employee
10 exercises the powers of a deputy sheriff, only after
11 consultation and in coordination with the appropriate local
12 sheriff's office, and only if the violation could result in an
13 administrative proceeding against a license or permit issued
14 by the division.

15 2. Enforce all criminal laws of the state within
16 specified jurisdictions when the division is a party to a
17 written mutual aid agreement with a state agency, sheriff, or
18 municipal police department, or when the division participates
19 in the Florida Mutual Aid Plan during a declared state
20 emergency.

21 Section 2. Subsections (6), (7), and (9) of section
22 210.04, Florida Statutes, are amended to read:

23 210.04 Construction; exemptions; collection.--

24 (6) The sale of single or loose unpacked cigarettes is
25 prohibited. ~~The division may authorize any person to give
26 away sample packages of cigarettes, each to contain not less
27 than two cigarettes upon which the taxes have been paid.~~

28 (7) Nothing in this part shall be construed to
29 prohibit the sale of cigarettes, upon which the tax has been
30 advanced, through the medium of vending machines as provided
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1 in s. 569.007,where the tax is collected by the said vending
2 machines.

3 (9) Agents, located within or without the state, shall
4 purchase stamps and affix such stamps in the manner prescribed
5 to packages or containers of cigarettes to be sold,
6 distributed, or given away within the state, in which case any
7 dealer subsequently receiving such stamped packages of
8 cigarettes will not be required to purchase and affix stamps
9 on such packages of cigarettes. However, the division may, in
10 its discretion, authorize manufacturers to distribute in the
11 state free sample packages of cigarettes containing not less
12 than 2 or more than 20 cigarettes, as provided in s. 859.075,
13 without affixing any tax stamps provided copies of shipping
14 invoices on such cigarettes are furnished, and payment of all
15 taxes imposed on such cigarettes by law is made, directly to
16 the division not later than the 10th day of each calendar
17 month. The tax on cigarettes in sample packages shall be
18 based on a unit in accordance with the taxing provisions of s.
19 210.02(1).

20 Section 3. Section 561.707, Florida Statutes, is
21 created to read:

22 561.707 Requirement of diligent management and
23 supervision; presumption.--

24 (1) Licensees shall exercise diligence in the
25 management and supervision of the licensed premises and in the
26 supervision and training of their employees, agents, officers,
27 or servants. In proceedings to impose discipline under s.
28 561.29, proof that employees, agents, officers, or servants of
29 the licensee, while in the scope of their employment,
30 committed at least three violations of the Beverage Law during
31 a 12-month period shall be prima facie evidence of a lack of

1 due diligence by the licensee in the management and
2 supervision of the licensed premises and in the supervision
3 and training of employees, agents, officers, or servants.

4 (2) The division may consider qualification as a
5 responsible vendor under s. 561.705 as evidence that the
6 licensee properly exercised the diligence required under this
7 section.

8 Section 4. Paragraph (a) of subsection (1) and
9 paragraph (a) of subsection (2) of section 562.11, Florida
10 Statutes, are amended to read:

11 562.11 Selling, giving, or serving alcoholic beverages
12 to person under age 21; misrepresenting or misstating age or
13 age of another to induce licensee to serve alcoholic beverages
14 to person under 21; penalties.--

15 (1)(a) It is unlawful for any person to sell, give,
16 serve, or permit to be served alcoholic beverages to a person
17 under 21 years of age or to permit a person under 21 years of
18 age to consume such beverages on the licensed premises.
19 Anyone convicted of violation of the provisions hereof is
20 guilty of a misdemeanor of the first ~~second~~ degree, punishable
21 as provided in s. 775.082 or s. 775.083.

22 (2) It is unlawful for any person to misrepresent or
23 misstate his age or the age of any other person for the
24 purpose of inducing any licensee or his agents or employees to
25 sell, give, serve, or deliver any alcoholic beverages to a
26 person under 21 years of age.

27 (a) Anyone convicted of violating the provisions of
28 this subsection is guilty of a misdemeanor of the first ~~second~~
29 degree, punishable as provided in s. 775.082 or s. 775.083.

30 Section 5. Subsection (3) is added to section 562.111,
31 Florida Statutes, to read:

1 562.111 Possession of alcoholic beverages by persons
2 under age 21 prohibited.--

3 (3) No civil or criminal liability may be imposed upon
4 any person whose duty it is to enforce the provisions of the
5 Beverage Law, or upon any person who is assisting a person
6 whose duty it is to enforce the provisions of the Beverage
7 Law, by reason of his or her being lawfully engaged in the
8 enforcement of any law or municipal ordinance relating to
9 alcoholic beverages.

10 Section 6. Subsection (1) of section 569.007, Florida
11 Statutes, is amended to read:

12 569.007 Sale or delivery of tobacco products;
13 restrictions.--

14 (1) The sale or delivery of tobacco products through a
15 vending machine is prohibited in order to prevent persons
16 under 18 years of age from purchasing or receiving tobacco
17 products through the use of such machines unless the machine
18 is located fully within premises where the dealer ensures that
19 no person younger than 18 years of age is present or permitted
20 to enter at any time within the unobstructed line of sight of
21 a dealer or a dealer's agent or employee who is responsible
22 for preventing persons under 18 years of age from purchasing
23 tobacco products through that machine.

24 Section 7. Subsections (5) and (6) are added to
25 section 569.008, Florida Statutes, to read:

26 569.008 Responsible retail tobacco products dealers;
27 qualifications; mitigation of disciplinary penalties; diligent
28 management and supervision; presumption.--

29 (5) Dealers shall exercise diligence in the management
30 and supervision of their premises and in the supervision and
31 training of their employees, agents, officers, or servants. In

1 proceedings to impose discipline under s. 569.006, proof that
2 employees, agents, officers, or servants of the dealer, while
3 in the scope of their employment, committed at least three
4 violations of s. 859.06 during a 12-month period shall be
5 prima facie evidence of a lack of due diligence by the dealer
6 in the management and supervision of his or her premises and
7 in the supervision and training of employees, agents,
8 officers, or servants.

9 (6) The division may consider qualification as a
10 responsible retail tobacco products dealer under this section
11 as evidence that the dealer properly exercised the diligence
12 required under this section.

13 Section 8. Subsection (2) of section 859.06, Florida
14 Statutes, is amended to read:

15 859.06 Selling, delivering, bartering, furnishing, or
16 giving tobacco products and cigarette wrappers to persons
17 under 18 years of age; criminal penalties; defense.--

18 (2) Any person who violates subsection (1) is guilty
19 of a misdemeanor of the first ~~second~~ degree, punishable as
20 provided in s. 775.082 or s. 775.083.

21 Section 9. Section 859.073, Florida Statutes, is
22 created to read:

23 859.073 Possession of cigarettes or other tobacco
24 products by a person under 18 years of age unlawful;
25 penalties.--

26 (1) It is unlawful for any person under 18 years of
27 age, except for a person acting in the scope of his or her
28 employment with a person, firm, association, or corporation
29 licensed under the provisions of chapter 210 or chapter 569,
30 knowingly to possess cigarettes or any other type of tobacco
31 products.

1 (2) The fact that an undercover operative or law
2 enforcement officer was involved in the detection and
3 investigation of an offense under this section shall not
4 constitute a defense to a prosecution under this section.

5 (3) Any law enforcement officer certified under
6 chapter 943 may issue a citation in such form as prescribed by
7 a county or municipality to any person violating the
8 provisions of this section. Any such citation must contain:

9 (a) The date and time of issuance.

10 (b) The name and address of the person cited.

11 (c) The date and time the civil infraction was
12 committed.

13 (d) The statute violated.

14 (e) The facts constituting the violation.

15 (f) The name and authority of the law enforcement
16 officer.

17 (g) The procedure for the person to follow to pay the
18 civil penalty, to contest the citation, or to appear in court.

19 (h) The applicable civil penalty if the person elects
20 not to contest the citation.

21 (i) The applicable civil penalty if the person elects
22 to contest the citation.

23 (4) Any person issued a citation pursuant to this
24 section shall be deemed to be charged with a civil infraction,
25 punishable by a maximum civil penalty not to exceed \$25 or 50
26 hours of community service or, where available, successful
27 completion of a school-approved anti-tobacco "alternative to
28 suspension" program.

29 (5) Any person who fails to comply with the directions
30 on the citation shall be deemed to waive his or her right to
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1 contest the citation, and an order to show cause may be issued
2 by the court.

3 Section 10. Section 859.075, Florida Statutes, is
4 created to read:

5 859.075 Free samples of cigarettes or other tobacco
6 products; prohibition.--

7 (1) Except as provided in subsection (2), it is
8 unlawful for any permittee licensed under chapter 210 or
9 chapter 569 to distribute or cause to be distributed any free
10 samples of cigarettes or other tobacco products.

11 (2)(a) Permittees may distribute free samples of
12 cigarettes or other tobacco products to persons 18 years of
13 age or older at professional conventions where the general
14 public is excluded.

15 (b) Permittees may provide free samples of cigarettes
16 or other tobacco products to persons 18 years of age or older
17 upon the purchase of cigarettes or other tobacco products.

18 (3) The Division of Alcoholic Beverages and Tobacco is
19 given full power and authority to revoke or suspend the permit
20 of a permittee upon violation of any provision of subsection
21 (1). The division may also assess and accept administrative
22 finances of up to \$1,000 against a permittee for each violation.
23 The division shall deposit all fines collected into the
24 General Revenue Fund as collected. An order imposing an
25 administrative fine becomes effective 15 days after the date
26 of the order.

27 Section 11. Section 859.078, Florida Statutes, is
28 created to read:

29 859.078 Enforcement; limitation on liability.--No
30 civil or criminal liability shall be imposed upon any person
31 whose duty it is to enforce the provisions of ss.

1 859.06-859.078 or chapter 569, or upon any person who is
2 assisting a person whose duty it is to enforce the provisions
3 of ss. 859.06-859.078 or chapter 569, by reason of his or her
4 being lawfully engaged in the enforcement of any law or
5 municipal ordinance relating to cigarettes, cigarette
6 wrappers, or other tobacco products.

7 Section 12. This act shall take effect October 1,
8 1997.

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11 HOUSE SUMMARY

12 Authorizes employees of the Division of Alcoholic
13 Beverages and Tobacco who are certified as law
14 enforcement officers to investigate, enforce, and
15 prosecute certain violations relating to tobacco
16 products. Requires licensees under the Beverage Law and
17 tobacco products dealers to exercise diligence in the
18 management and supervision of their premises and in the
19 supervision and training of their employees, agents,
20 officers, or servants, and provides grounds for
21 presumption of lack of such diligence. Increases
22 penalties applicable to provision of alcoholic beverages
23 to persons under age 21 and to such persons
24 misrepresenting or misstating their age or the age of
25 another to secure alcoholic beverages. Exempts certain
26 persons from civil or criminal liability relating to
27 enforcement of the Beverage Law and to enforcement of
28 laws relating to cigarette wrappers, cigarettes, and
29 other tobacco products. Revises requirements for
30 location of vending machines that offer tobacco products.
31 Increases penalties applicable to providing tobacco
products or cigarette wrappers to persons under 18 years
of age. Prohibits possession of cigarettes or tobacco
products by persons under 18 years of age and provides
penalties therefor. Prohibits free samples of cigarettes
or other tobacco products, except under specified
circumstances, and provides penalties therefor. See bill
for details.