

By Representative Jacobs

1 A bill to be entitled
2 An act relating to smoking on or near school
3 property; amending s. 386.212, F.S., which
4 prohibits persons under 18 from smoking tobacco
5 in or near a public or private elementary,
6 middle, or secondary school during certain
7 hours; removing the age limitation and time
8 limitation on such prohibition; providing that
9 persons under 18 who violate said prohibition
10 shall be punished in the same manner as for
11 violation of s. 569.11(1), F.S., which
12 prohibits possession of any tobacco product by
13 a person under 18, and that persons 18 and
14 older who violate said prohibition shall be
15 punished as provided in s. 386.208, F.S., which
16 provides the penalty for smoking in public
17 places or meetings; amending s. 386.208, F.S.,
18 to conform; amending s. 322.056, F.S., which
19 provides for mandatory revocation or suspension
20 of, or delay of eligibility for, driver's
21 licenses for persons under 18 who violate s.
22 569.11, F.S., to include violation of s.
23 386.212, F.S.; amending s. 569.12, F.S., which
24 provides for enforcement and the form of
25 citation for violation of s. 569.11, F.S., to
26 include violation of s. 386.212, F.S.; amending
27 s. 569.19, F.S., which requires an annual
28 report on violations of s. 569.11, F.S., to
29 include violations of s. 386.212, F.S.;
30 providing an effective date.

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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 386.208, Florida Statutes, is
4 amended to read:

5 386.208 Penalties.--Any person who violates s.
6 386.204, and any person 18 years of age or older who violates
7 s. 386.212, commits a noncriminal violation as provided for in
8 s. 775.08(3), punishable by a fine of not more than \$100 for
9 the first violation and not more than \$500 for each subsequent
10 violation. Jurisdiction shall be with the appropriate county
11 court.

12 Section 2. Section 386.212, Florida Statutes, is
13 amended to read:

14 386.212 Smoking prohibited near school property;
15 penalty.--

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

22 (2)(a) Any person under 18 years of age who violates
23 the provisions of this section commits a noncriminal
24 violation, punishable as provided in s. 569.11 for violation
25 of s. 569.11(1).

26 (b) Any person 18 years of age or older who violates
27 the provisions of this section commits a noncriminal
28 violation, punishable as provided in s. 386.208.

29 ~~(2) A law enforcement officer may issue a citation in~~
30 ~~such form as prescribed by a county or municipality to any~~

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1 ~~person violating the provisions of this section. Any such~~
2 ~~citation must contain:~~
3 ~~(a) The date and time of issuance.~~
4 ~~(b) The name and address of the person cited.~~
5 ~~(c) The date and time the civil infraction was~~
6 ~~committed.~~
7 ~~(d) The statute violated.~~
8 ~~(e) The facts constituting the violation.~~
9 ~~(f) The name and authority of the law enforcement~~
10 ~~officer.~~
11 ~~(g) The procedure for the person to follow to pay the~~
12 ~~civil penalty, to contest the citation, or to appear in court.~~
13 ~~(h) The applicable civil penalty if the person elects~~
14 ~~not to contest the citation.~~
15 ~~(i) The applicable civil penalty if the person elects~~
16 ~~to contest the citation.~~
17 ~~(3) Any person issued a citation pursuant to this~~
18 ~~section shall be deemed to be charged with a civil infraction~~
19 ~~punishable by a maximum civil penalty not to exceed \$25, or 50~~
20 ~~hours of community service or, where available, successful~~
21 ~~completion of a school-approved anti-tobacco "alternative to~~
22 ~~suspension" program.~~
23 ~~(4) Any person who fails to comply with the directions~~
24 ~~on the citation shall be deemed to waive his or her right to~~
25 ~~contest the citation and an order to show cause may be issued~~
26 ~~by the court.~~
27 Section 3. Subsections (2) and (3) of section 322.056,
28 Florida Statutes, are amended to read:
29 322.056 Mandatory revocation or suspension of, or
30 delay of eligibility for, driver's license for persons under
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1 age 18 found guilty of certain alcohol, drug, or tobacco
2 offenses; prohibition.--

3 (2) If a person under 18 years of age is found by the
4 court to have committed a noncriminal violation under s.
5 386.212 or s. 569.11 and that person has failed to comply with
6 the procedures established in s. 569.11 ~~that section~~ by
7 failing to fulfill community service requirements, failing to
8 pay the applicable fine, or failing to attend a locally
9 available school-approved anti-tobacco program, and:

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

- 14 1. For the first violation, for 30 days.
- 15 2. For the second violation within 12 weeks of the
16 first violation, for 45 days.

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

- 21 1. For the first violation, for 30 days.
- 22 2. For the second violation within 12 weeks of the
23 first violation, for 45 days.

24 (c) The person is ineligible by reason of age for a
25 driver's license or driving privilege, the court shall direct
26 the department to withhold issuance of his or her driver's
27 license or driving privilege as follows:

- 28 1. For the first violation, for 30 days.
- 29 2. For the second violation within 12 weeks of the
30 first violation, for 45 days.

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1 Any second violation of s. 386.212 or s. 569.11 not within the
2 12-week period after the first violation will be treated as a
3 first violation and in the same manner as provided in this
4 subsection.

5 (3) If a person under 18 years of age is found by the
6 court to have committed a third violation of s. 386.212 or s.
7 569.11 within 12 weeks of the first violation, the court must
8 direct the Department of Highway Safety and Motor Vehicles to
9 suspend or withhold issuance of his or her driver's license or
10 driving privilege for 60 consecutive days. Any third
11 violation of s. 386.212 or s. 569.11 not within the 12-week
12 period after the first violation will be treated as a first
13 violation and in the same manner as provided in subsection
14 (2).

15 Section 4. Section 569.11, Florida Statutes, reads:
16 569.11 Possession, misrepresenting age or military
17 service to purchase, and purchase of tobacco products by
18 persons under 18 years of age prohibited; penalties;
19 jurisdiction; disposition of fines.--

20 (1) It is unlawful for any person under 18 years of
21 age to knowingly possess any tobacco product. Any person
22 under 18 years of age who violates the provisions of this
23 subsection commits a noncriminal violation as provided in s.
24 775.08(3), punishable by:

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

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

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

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7 Any second or subsequent violation not within the 12-week time
8 period after the first violation is punishable as provided for
9 a first violation.

10 (2) It is unlawful for any person under 18 years of
11 age to misrepresent his or her age or military service for the
12 purpose of inducing a dealer or an agent or employee of the
13 dealer to sell, give, barter, furnish, or deliver any tobacco
14 product, or to purchase any tobacco product from a person or a
15 vending machine. Any person under 18 years of age who
16 violates a provision of this subsection commits a noncriminal
17 violation as provided in s. 775.08(3), punishable by:

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

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

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

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1 Any second or subsequent violation not within the 12-week time
2 period after the first violation is punishable as provided for
3 a first violation.

4 (3) Any person under 18 years of age cited for
5 committing a noncriminal violation under this section must
6 sign and accept a civil citation indicating a promise to
7 appear before the county court or comply with the requirement
8 for paying the fine and must attend a school-approved
9 anti-tobacco program, if locally available.

10 (4) A person charged with a noncriminal violation
11 under this section must appear before the county court or
12 comply with the requirement for paying the fine. The court,
13 after a hearing, shall make a determination as to whether the
14 noncriminal violation was committed. If the court finds the
15 violation was committed, it shall impose an appropriate
16 penalty as specified in subsection (1) or subsection (2). A
17 person who participates in community service shall be
18 considered an employee of the state for the purpose of chapter
19 440, for the duration of such service.

20 (5)(a) If a person under 18 years of age is found by
21 the court to have committed a noncriminal violation under this
22 section and that person has failed to complete community
23 service, pay the fine as required by paragraph (1)(a) or
24 paragraph (2)(a), or attend a school-approved anti-tobacco
25 program, if locally available, the court must direct the
26 Department of Highway Safety and Motor Vehicles to withhold
27 issuance of or suspend the driver's license or driving
28 privilege of that person for a period of 30 consecutive days.

29 (b) If a person under 18 years of age is found by the
30 court to have committed a noncriminal violation under this
31 section and that person has failed to pay the applicable fine

1 as required by paragraph (1)(b) or paragraph (2)(b), the court
2 must direct the Department of Highway Safety and Motor
3 Vehicles to withhold issuance of or suspend the driver's
4 license or driving privilege of that person for a period of 45
5 consecutive days.

6 (6) Eighty percent of all civil penalties received by
7 a county court pursuant to this section shall be transferred
8 to the Department of Education to provide for teacher training
9 and for research and evaluation to reduce and prevent the use
10 of tobacco products by children, pursuant to s. 233.067(4).
11 The remaining 20 percent of civil penalties received by a
12 county court pursuant to this section shall remain with the
13 clerk of the county court to cover administrative costs.

14 Section 5. Section 569.12, Florida Statutes, is
15 amended to read:

16 569.12 Jurisdiction; tobacco product enforcement
17 officers or agents; enforcement.--

18 (1) In addition to the Division of Alcoholic Beverages
19 and Tobacco of the Department of Business and Professional
20 Regulation, any law enforcement officer certified under s.
21 943.10(1), (6), or (8) shall enforce the provisions of this
22 chapter.

23 (2)(a) A county or municipality may designate certain
24 of its employees or agents as tobacco product enforcement
25 officers. The training and qualifications of the employees or
26 agents for such designation shall be determined by the county
27 or the municipality. Nothing in this section shall be
28 construed to permit the carrying of firearms or other weapons
29 by a tobacco product enforcement agent, nor does designation
30 as a tobacco product enforcement officer provide the employee
31 or agent with the power of arrest or subject the employee or

1 agent to the provisions of ss. 943.085-943.255. Nothing in
2 this section amends, alters, or contravenes the provisions of
3 any state-administered retirement system or any
4 state-supported retirement system established by general law.

5 (b) A tobacco product enforcement officer is
6 authorized to issue a citation to a person under the age of 18
7 when, based upon personal investigation, the officer has
8 reasonable cause to believe that the person has committed a
9 civil infraction in violation of s. 386.212 or s. 569.11.

10 (3) A correctional probation officer as defined in s.
11 943.10(3) is authorized to issue a citation to a person under
12 the age of 18 when, based upon personal investigation, the
13 officer has reasonable cause to believe that the person has
14 committed a civil infraction in violation of s. 386.212 or s.
15 569.11.

16 (4) A citation issued to any person violating the
17 provisions of s. 386.212 or s. 569.11 shall be in a form
18 prescribed by the Division of Alcoholic Beverages and Tobacco
19 of the Department of Business and Professional Regulation and
20 shall contain:

21 (a) The date and time of issuance.

22 (b) The name and address of the person to whom the
23 citation is issued.

24 (c) The date and time the civil infraction was
25 committed.

26 (d) The facts constituting reasonable cause.

27 (e) The number of the Florida statute violated.

28 (f) The name and authority of the citing officer.

29 (g) The procedure for the person to follow in order to
30 contest the citation, perform the required community service,
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1 attend the required anti-tobacco program, or to pay the civil
2 penalty.

3 Section 6. Subsection (4) of section 569.19, Florida
4 Statutes, is amended to read:

5 569.19 Annual report.--The division shall report
6 annually with written findings to the Legislature and the
7 Governor by December 31, starting with the year 1997, on the
8 progress of implementing the enforcement provisions of this
9 chapter. This must include, but is not limited to:

10 (4) The number of persons under age 18 cited for
11 violations of s. 386.212 or s. 569.11 and sanctions imposed as
12 a result of citation.

13 Section 7. This act shall take effect October 1 of the
14 year in which enacted.

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17 HOUSE SUMMARY

18 Revises provisions which prohibit persons under 18 from
19 smoking tobacco in or near a public or private
20 elementary, middle, or secondary school during certain
21 hours, to remove the age limitation and time limitation
22 on such prohibition. Provides that persons under 18 who
23 violate said prohibition shall be punished in the same
24 manner as for violation of s. 569.11(1), F.S., which
25 prohibits possession of any tobacco product by a person
26 under 18, and that persons 18 and older who violate said
27 prohibition shall be punished as provided in s. 386.208,
28 F.S., which provides the penalty for smoking in public
29 places or meetings.
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