

**STORAGE NAME:** h0845s1.rs  
**DATE:** March 25, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REGULATED SERVICES  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB's 845 & 1255  
**RELATING TO:** Tobacco Products/Possession by persons under 18 years of age  
**SPONSOR(S):** Committee on Regulated Services and Representatives Morroni, Saunders, Tobin & others  
**STATUTE(S) AFFECTED:** Chapters 20, 322, 569 and 859, Florida Statutes  
**COMPANION BILL(S):** SB 1964, SB 1742  
**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**  
(1) REGULATED SERVICES YEAS 11 NAYS 0  
(2) FAMILY LAW AND CHILDREN  
(3)  
(4)  
(5)

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**I. SUMMARY:**

This bill attempts to decrease access to and possession of tobacco products by persons under the age of 18 and makes it a noncriminal violation for persons under the age of 18 to possess, purchase, or misrepresent legal age or military status to acquire tobacco products. Tobacco products include cigarettes, cigars, smokeless tobaccos such as chewing tobacco and snuff, products made in whole or in part from tobacco leaves, and cigarette wrappers. The bill establishes a civil citation process for violations which includes community service, a fine, and attendance at an anti-tobacco program.

The bill mandates the suspension, revocation, or withholding of issuance of the driver license or driving privilege for a person under age 18 who fails to comply with requirements of the civil citation or upon a third violation for the possession or purchase of tobacco products within a 12 week period.

The bill makes agents of the Division of Alcoholic Beverages and Tobacco, all other law enforcement officers and correctional probation officers responsible for enforcing the prohibitions against the possession or purchase of tobacco products by persons under the age of 18. Additionally, the bill permits counties and municipalities to establish and train tobacco product enforcement officers to assist with enforcement and limits their powers.

The bill eliminates self-service displays of tobacco products, except for cigars and pipe tobacco. Sales may be made from a vending machine if the machine is equipped with an operational lockout device or from a locked display case. Additionally, the bill provides an exception for tobacco products sold within a premises where persons under the age of 18 are prohibited entry.

The bill has an indeterminate revenue impact and takes effect October 1, 1997.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 569, F.S., is currently titled "Tobacco Products Permits" and regulates sellers of tobacco products. This chapter provides legislative intent and retailer responsibilities to prevent the sale of tobacco products to persons under the age of 18.

Section 859.06, F.S., establishes a criminal violation (second degree misdemeanor) for a retailer who sells tobacco products to a person under the age of 18. There is, however, no statutory prohibition against the purchase or possession of tobacco products by persons under the age of 18.

Section 859.061, F.S., requires the Division of Alcoholic Beverages and Tobacco (DABT) of the Department of Business and Professional Regulation to provide tobacco products dealers with, and mandates the dealers display, signs stating it is illegal to sell tobacco products to persons under age 18. The DABT is responsible for enforcing this provision and noncompliance is deemed a second degree misdemeanor.

Section 569.006, F.S., gives the DABT the authority to suspend or revoke a tobacco product dealer's permit and assess and collect fines for violations committed by the dealer or the dealer's agent or employee. When assessing administrative sanctions against a licensee for violations by the licensee's employee, the courts have required the state to demonstrate a pattern of activity which establishes a lack of diligence on the part of the licensee to prevent unlawful actions.

Section 569.007, F.S., allows the use of vending machines that dispense tobacco products if the machine is within the unobstructed line of sight of the dealer or the dealer's agent or employee who is responsible for preventing persons under the age of 18 from purchasing a tobacco product from the vending machine.

Section 322.056, F.S., as amended by Chapter 95-148, L.O.F., makes mandatory the revocation, suspension, delayed eligibility, or extension of suspension of the driver's license or driving privilege for persons under age 18 found guilty or delinquent of certain alcohol or drug offenses.

Division compliance visits in FY 1995-1996 documented 708 violations for the illegal sale of tobacco products to persons under age 18. According to recent census figures, there are approximately 2.3 million citizens in Florida in the 5 to 17 age group. The Center for Disease Control estimates that approximately 22.1% of all individuals in this age group smoke or use other tobacco products.

FDA Rule Restricting the Sale and Distribution of Tobacco Products

In the August 1996 Federal Register, the Food and Drug Administration (FDA) published the final rule on its regulation of the sale and distribution of tobacco products to children and adolescents. This rule is the result of FDA's assertion of jurisdiction over tobacco products. A portion of the rule became effective on February 28, 1997, and the remainder will take effect on August 28, 1997, unless invalidated by the present challenge. The rule makes the sale of tobacco products to a person under the age of 18 a federal violation and establishes specific conditions for the sale, distribution and

promotion of tobacco products. Generally, that rule prohibits self-service displays and sales except in facilities where persons under the age of 18 are prohibited entry, and prohibits the sale of single cigarettes and the giving away of sample products. The rule also imposes restrictions on advertising and the sale and distribution of non-tobacco items that include tobacco logos.

**B. EFFECT OF PROPOSED CHANGES:**

The bill retitles Chapter 569, F.S., to read "Tobacco Products," and moves the placement of statutory provisions relating to tobacco products from Chapter 859, F.S., to Chapter 569, F.S.

Under current law it is unlawful to sell tobacco products to a person under the age of 18, but it is not unlawful for a person under the age of 18 to purchase or possess tobacco products. This bill makes it unlawful for a person under age 18 to purchase, possess, or misrepresent his or her age or military status in order to acquire any tobacco product and establishes a civil citation process for violators.

For a first violation, the bill requires the violator to perform 16 hours of community service or, in lieu of community service, pay a \$25 fine. The violator is also required to attend a school-approved anti-tobacco program, if one is available locally. For a second violation within 12 weeks of the first violation, the bill requires the violator to pay a \$25 fine. Upon a third or subsequent violation within 12 weeks of the first violation, the bill mandates the suspension or revocation of the persons' driver's license for a period of 60 days. If a second or subsequent violation occurs which is not within 12 weeks of the first violation, the clock begins anew and the violation is punishable as a first violation.

If the person fails to complete the required community service, pay the required fine, or fails to attend an available school-approved anti-tobacco program, the court is required to direct the Department of Highway Safety and Motor Vehicles to suspend or revoke the person's driver's license for a period of time as follows: for a first violation, 30 days and, for a second violation with 12 weeks of the first violation, 45 days.

The bill specifies that a suspension or revocation resulting from the unlawful possession or purchase of tobacco products by a person under the age of 18 shall not result in either increased insurance premiums or in points assessed against the person's driving record.

The Division of Alcoholic Beverages and Tobacco (DABT), any law enforcement officer certified under s. 943.10(1), (6), or (8), F.S., and any correctional probation officer as defined in s. 943.10(3), F.S., are given responsibility for enforcing the restrictions on the purchase or possession of tobacco products.

In addition, the bill allows municipalities and counties to designate tobacco product enforcement officers to enforce the new prohibition against the purchase or possession of tobacco products by persons under age 18. These officers are also granted authority to issue citations for violations of s. 386.212, F.S., which is the prohibition created by Chapter 96-217, L.O.F., against possession of tobacco within 1,000 feet of a school. That violation imposes a fine of up to \$25 or 50 hours of community service or completion of a school-approved anti-tobacco alternative to suspension program.

The bill grants jurisdiction over these cases to county courts and requires 80% of the fines collected be remitted to Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children; the remaining 20% of fines collected shall be retained by the court.

In an effort to make tobacco products less accessible to minors, the bill eliminates self-service displays. Tobacco products must be kept behind, above, on, or below the checkout counter and only accessible to the clerk. The bill provides an exemption from these display and method of sale restrictions for cigars and pipe tobacco.

The bill allows the use of vending machines, but only if equipped with an operational lockout device which is under the control of the clerk. The vending machine may only dispense one tobacco product at a time and must be designed to be inoperable during power failures.

The bill exempts all tobacco products from the display restrictions created in s. 569.007, F.S., if they are sold in an establishment where persons under the age of 18 are prohibited entrance.

The bill amends s. 569.008, F.S., to establish a due diligence standard which specifies that three violations of s. 569.101, F.S., in a six month period constitutes a lack of due diligence by the dealer in the management and supervision of the licensed premises and in the supervision and training of employees. Additionally, this bill increases the penalty for the unlawful sale of tobacco products to a person under the age of 18 from a second degree misdemeanor to a first degree misdemeanor for a second or subsequent violation occurring within a year of a previous violation.

To assist checkout clerks in determining whether a person is old enough to purchase tobacco products, the bill requires retailers to provide point-of-sale instructional material in the form of a calendar, or similar format, at the checkout counter. The calendar must contain substantially the following language: "If you were not born before this date {*insert date & applicable year*} you cannot buy tobacco products."

The bill requires the DABT to report annually to the Governor and the Legislature on implementation of the tobacco access laws.

#### Conformance with FDA Rules

The elimination of self-service displays and sales of tobacco products contained in this legislation conforms with the FDA rule. The bill exempts cigars and pipe tobacco from the self-service restrictions, as does the FDA rule. The CS/HB 845 & 1255 is not as stringent as the FDA rule with regards to vending machines since the bill allows the sale of tobacco products through vending machines if the machine is equipped with a lockout device. This bill does not prohibit the dispensing of sample tobacco products, but reiterates the prohibition against giving the product to a person under the age of 18. Florida law already prohibits the sale of single or loose cigarettes. The bill does not address advertising nor the gift or sale of non-tobacco products such as t-shirts.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Present law makes it unlawful for a retailer to sell tobacco products to a person under 18 years of age, but does not provide a prohibition for the minor's purchase or possession. This bill creates a civil penalty for the purchase or possession of tobacco products by a person under the age of 18. The youth's driver's license is subject to suspension for failure to comply with the provisions of the citation.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION RESEARCH:**

**Section 1.** Amends s. 20.165, F.S., to delete statutory references made obsolete by transferring portions of chapter 859, F.S., to chapter 569, F.S.

**Section 2.** Retitles Chapter 569, F.S.

- Chapter 569, F.S., currently entitled "Tobacco Products Permits" is retitled to read "Tobacco Products."

**Section 3.** Renumbers and amends s. 859.06, F.S., as s. 569.101, F.S.

- Transfers and renumbers s. 859.06, F.S., regarding the sale or delivery of tobacco products to persons under age 18 to s. 569.101, F.S. Changes the reference to "cigarette or other tobacco product" to the general term "tobacco product" to conform to the newly created definition of tobacco product found in Section 4.
- Increases the penalty for the sale of tobacco products to a person under the age of 18 to a first degree misdemeanor if the sale occurs within one year of the first violation.
- Makes a terminology change regarding a violation of the section: from "is guilty of" to "commits."

**Section 4.** Amends s. 569.002, F.S.

- Makes the definition section applicable to the entire chapter and redefines "tobacco products" to 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."
- Exempts from the statutory definition of "any person under 18" those who have had the disability of nonage removed under Chapter 743, F.S.; a member of the military; someone who has otherwise been emancipated by a court of competent jurisdiction; persons acting in the scope of his or her lawful employment; and persons working with law enforcement to test compliance with the provisions of chapter 569, F.S.

**Section 5.** Creates s. 569.11, F.S.

- Makes possession of tobacco products by persons under the age of 18 a noncriminal violation, with the first violation punishable by 16 hours of community service or, in lieu of community service, a \$25 fine and attendance at a school-approved anti-tobacco program, if one is available locally. The penalty for a second violation within 12 weeks of the first violation is \$25, and the penalty for a third or subsequent violation within 12 weeks of the first violation is a 60 day driver's license suspension.
- Makes it a noncriminal violation for persons under the age of 18 to misrepresent the person's age or military status in order to induce a dealer or dealer's agent or employee to sell or furnish the person with a tobacco product or to purchase any

tobacco product from a person or vending machine. The penalties for this violation are identical to those for possession.

- Requires anyone cited for a noncriminal violation under this section to sign and accept a civil citation indicating a promise to appear in county court or to comply with the requirement for paying the fine and to attend a school-approved anti-tobacco program if one is available locally.
- Provides that if the person cited fails to perform the required community service, pay the assessed fine, or fails to attend the anti-tobacco program, the court must order the Department of Highway Safety and Motor Vehicles to suspend, withhold issuance of, or revoke the violator's driver license or driving privilege. For a first violation, the person's driver's license must be suspended for 30 days and for a second violation within 12 weeks of the first violation the person's driver's license must be suspended for 45 days.
- Allocates 80 percent of the civil penalties collected by the court under this section to the Department of Education for research and evaluation to reduce and prevent the use of tobacco products by children and the remaining 20 percent to the county clerk to cover administrative costs.

**Section 6.** Creates s. 569.12, F.S.

- Specifies that agents with the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, any other law enforcement officer certified under s. 943.10(1), (6) or (8), F.S., [relating to full, part time or auxiliary officers], and correctional probation officers as defined by s. 943.10(3), F.S., will enforce the prohibition on the purchase and possession of tobacco products by persons under the age of 18.
- Permits a county or municipality to designate, qualify, and train employees or agents as tobacco product enforcement officers. The bill clarifies that this does not include the power to carry firearms or other weapons, nor the power to arrest, nor subject the tobacco product enforcement officer to the provisions of s. 943.085 - 943.255, F.S., [relating to the employment and training of law enforcement officers]. Tobacco product enforcement officers are authorized to issue citations to persons under age 18 when the officer has reasonable cause to believe the person has violated s. 386.212, F.S., or s. 569.11, F.S.
- Requires that the citation contain certain information.

**Section 7.** Amends s. 569.003, F.S.

- Amends s. 569.003, F.S., regarding permitting of retail tobacco products dealers, making the section applicable to the entire chapter.

**Section 8.** Amends s. 569.004, F.S.

- Amends s. 569.004, F.S., regarding consent to inspection and warrantless search, so that it applies to the entire chapter.

**Section 9.** Amends s. 569.006, F.S.

- Amends s. 569.006, F.S., regarding administrative penalties, so that it applies to the entire chapter.

**Section 10.** Renumbers and amends s. 859.061, F.S., as s. 569.14, F.S.

- Requires retail dealers to provide point of sale material in a calendar format, or similar format, to assist the dealer's employee in determining whether a person is of legal age to purchase tobacco products. This material must contain substantially the following language: "If you were not born before this date [*insert date and applicable year*] you cannot buy tobacco products."
- Makes several technical amendments to conform word usage to other sections of the statute.

**Section 11.** Amends s. 569.007, F.S.

- Amends s. 569.007, F.S., relating to the sale or delivery of tobacco products, to eliminate self-service displays. These restrictions prohibit the sale or delivery of tobacco products except from behind, above, on, or below the counter or checkout area or from a locked display case, thereby preventing access by anyone other than the dealer or the dealer's employee.

The bill provides three exemptions from this display requirement. First, since cigars and pipe tobacco are not popular with persons under age 18, the bill creates an exemption for those products.

Second, the bill allows the sale of tobacco products through a vending machine if the machine is equipped with an operational lockout device which is under the control of the dealer. The vending machine must be equipped to dispense only one tobacco product at a time and must include a mechanism which prevents the machine from dispensing products if the lockout device is disabled or in the event of a power failure.

Third, the display restrictions do not apply to establishments which prohibit persons under 18 years of age on the licensed premises.

**Section 12.** Creates s. 569.0075, F.S.

- Prohibits an entity licensed or permitted under chapter 210, F.S., or chapter 569, F.S., from giving sample tobacco products to anyone under the age of 18 and provides for administrative sanctions.

**Section 13.** Amends s. 569.008, F.S.

- When assessing administrative sanctions against a licensee for violations by the licensee's employee, the courts have required the state to demonstrate a pattern of activity which establishes a lack of diligence on the part of the licensee to prevent unlawful actions. Newly created subsection (5) establishes a standard of compliance by which to assess culpability. Subsection (5) specifies that three

violations of s. 569.101, F.S., during a six month period constitute a lack of due diligence in the management and supervision of the licensed premises and in the supervision and training of the licensee's employees.

- Changes the reference to those affected by the statute from "underage persons" to "persons under 18 years of age" and makes the section applicable to the entire chapter.
- Corrects a statutory reference for determining penalties from s. 569.005, F.S., to s. 569.006, F.S.

**Section 14.** Amends s. 569.009, F.S.

- Makes s. 569.009, F.S., relating to rulemaking authority of the Division, applicable to the entire chapter.

**Section 15.** Amends s. 322.056, F.S., as amended by Ch. 95-148, L.O.F.

- Amends s. 322.056, F.S., regarding mandatory license suspension for certain drug and alcohol offenses committed by persons under age 18, to include tobacco offenses.
- Provides that if a person under age 18 is found to have committed a violation of s. 569.11, F.S., relating to possessing or purchasing tobacco products and fails to comply with the requirements of the citation, or if it is a third or subsequent violation within a 12 week period, the person's driver's license or driving privilege must be suspended, revoked, or withheld. Provides a schedule of violations with specified penalty terms.
- Subsection (5) specifies that the suspension or revocation of a person's driver's license as a result of a violation of s. 569.11, F.S., shall not result in an increase in insurance rates or premium or in the assessment of points against a driving record .

**Section 16.** Creates s. 569.19, F.S.

- Requires the Division of Alcoholic Beverages and Tobacco to report annually to the Legislature and the Governor on the progress of implementing the tobacco access laws.

**Section 17.** Requires the DABT to apprise all entities licensed or permitted under chapters 210, F.S., and 569, F.S., of the provisions contained in this legislation.

**Section 18.** Provides a \$25,000 appropriation to the DABT for reprinting the signs required in s. 569.14, F.S.

**Section 19.** Provides the effective date as October 1, 1997, except as otherwise provided.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Revenues:

None.

Expenditures:

FY 1996/97

Alcoholic Beverage and Tobacco TF

\$25,000

This estimate by the DABT is the cost of printing and distributing new signs to tobacco products retailers. Additionally, the DABT will incur the expense of notifying licensees of the new prohibitions for the placement and sale of tobacco products.

2. Recurring Effects:

Revenues:

Civil penalties imposed by the county court will increase receipts to the DOE for teacher training to reduce and prevent the use of tobacco products by children by an indeterminate amount.

The bill is aimed at decreasing the access to and possession of tobacco products by persons under age 18. Any reduction in retail sales to this age group will be accompanied by a reduction in excise and sales taxes paid to the state. As such, the bill has a potential indeterminate negative impact to state General Revenue and trust funds.

Expenditures:

The enforcement of this bill by the Division of Alcoholic Beverages and Tobacco, as well as by other state law enforcement agencies, may increase current operational expenditures. Such increase in expenditures is indeterminate.

Restricting a juvenile's driving privilege and/or license may increase the workload for the Department of Highway Safety and Motor Vehicles, Division of Driver Licenses. The associated increased cost is indeterminate.

3. Long Run Effects Other Than Normal Growth:

Over an extended period of time, the state may experience a reduction in health care expenditures as a result of decreased tobacco use. Any reduction in health care costs realized as a result of decreased tobacco use is indeterminate.

4. Total Revenues and Expenditures:

Revenues:

See A.2. above.

Expenditures:

See A.1. and A.2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Revenues:

The bill is aimed at decreasing access to and possession of tobacco products by persons under age 18. Any reduction in retail sales to this age group will be accompanied by a reduction in excise and sales taxes paid to the state. As such, the bill has a potential indeterminate negative impact on the amount of these tax revenues distributed to counties and municipalities.

Expenditures:

Counties and chartered municipalities are authorized, but not required, to establish tobacco product enforcement officers to assist with enforcement. If established, these positions could require an expenditure of funds.

County courts may experience an increase in costs due to violators who contest their sanction. There may also be additional costs to the clerk's office associated with facilitating the performance of community service. However, 20% of the fine is dedicated to cover the court's costs.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Any reduction in tobacco products sales as a result of the bill will correspondingly reduce the amount of revenues received by tobacco manufacturers, distributors, and vendors.

2. Direct Private Sector Benefits:

To the extent that the bill discourages smoking by minors, the private sector may realize an improvement in the public health.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the creation of the tobacco products enforcement program specified in the bill is voluntary, the bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

Further, Article VII, Section 18(d), provides an exemption for laws creating noncriminal infractions.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Because this bill makes it unlawful for persons under age 18 to purchase or possess tobacco products, it may reduce the amount of state tax shared with counties and municipalities. However, the bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Technical Concerns:

Section 569.008(5), F.S., as found in Section 13 of the bill, establishes a due diligence standard for imposing administrative sanctions against a tobacco products dealer and refers to the supervision and training of "employees, agents, *officers*, or servants." Inclusion of the reference to officers was, most likely, unintended since the courts have held that a single violation by an officer constitutes grounds for administrative sanctions. The Legislature may wish to consider an amendment deleting the reference to officers.

Section 569.11, F.S., as found in Section 5 of the bill, establishes the penalty for the unlawful purchase or possession of tobacco products and includes a requirement that the person "attend a school-approved anti-tobacco program, if locally available." The Legislature may wish to consider an amendment replacing the word "attend" with "complete."

Information:

The 1994 *Surgeon General's Report on Preventing Tobacco Use Among Young People* cites model laws for preventing underage tobacco use. Among those recommendations were the following suggestions:

**Establish the minimum age for legal tobacco sales as 19.** The rationale for this age threshold is that many persons age 18 are still in high school. Setting the minimum age at 19 would ideally keep tobacco products out of schools. There is also the suggestion of taking the minimum age up to 21, so that it coincides with alcohol laws and may facilitate their joint enforcement. *Florida law currently bans cigarette sales to persons under 18 years of age [see 859.06, F.S.].*

**Create a tobacco sales licensing system with a graduated schedule of penalties for illegal sales.** This provides the enforcement body with a list of tobacco retailers, making enforcement easier. *Florida already has such a system [see 569.003, F.S.].* The report went on to suggest that retailers be required to pass a test on vendor responsibilities in order to obtain the license. *Florida law establishes criteria for being considered a responsible retail tobacco products dealer; such designation permits agency mitigation for certain violations [see 569.008, F.S.].*

**Place primary responsibility for enforcement with a designated agency.** The report suggests a comprehensive approach that includes the input of public health and law enforcement officials, which is financed through tobacco license fees and excise taxes. *Florida is cited in the report as one of only 2 states (Florida and Vermont) that use their liquor control agencies to enforce laws prohibiting the sale of tobacco products to persons under age 18 [see Chapter 859, F.S.]. This bill requires enforcement of tobacco access laws by law enforcement officers, agents of the Division of Alcoholic Beverages and Tobacco, correctional probation officers, and if a county or municipality elects to institute them, local tobacco product enforcement officers.*

**Use civil penalties and local courts to assess fines.** According to the report, attempts to use criminal proceedings to enforce tobacco access laws have been unsuccessful. It is suggested that a ticketing or administrative process be established, possibly with enforcement through local health departments. *This bill establishes a non-criminal civil citation.*

**Ban cigarette vending machines.** Less restrictive means of preventing the sale of tobacco products to minors have proven less effective than a total ban. *Florida bans the sale of cigarettes through vending machines out of the line of sight of the vendor. [see 569.007, F.S.] This bill would allow the sale of tobacco products through a vending machine which is equipped with a lockout device.*

**Require tobacco retailers to display signs detailing the law regarding tobacco sales.** *Florida law currently requires the posting of this type of sign [859.061, F.S.]. This bill would require the updating of those signs.*

**Require tobacco to be sold from behind the checkout counter.** *This bill requires all tobacco products, except cigars and pipe tobacco, to be sold from above, on, below, or behind the checkout counter or from a locked display case.*

**Ban the sale of individual cigarettes, distribution of free samples of tobacco products and the distribution of tobacco through the mail.** *Florida law currently bans the sale of loose cigarettes [see s. 210.04(6), F.S.] and the bill reiterates that it is unlawful for a licensee to give sample tobacco products to persons under the age of 18.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill is a significant rewrite of HB 845 and HB 1255 and contains elements from both bills as well as provisions which were not included in either. The following are the substantive additions or revisions:

- ◆ Both bills provided a civil citation for the purchase or possession of tobacco products by minors. The structure of the penalty in both bills was amended and now includes community service, a monetary fine, attendance at school-approved anti-tobacco program, and potential for driver's license suspension;
- ◆ The bill authorizes correctional probation officers to write citations (new);
- ◆ The bill allows local governments to appoint tobacco product enforcement officers and grants authority for those officers to issue citations for violations of the provisions of this bill (HB 845) and to also issue citations for violations of the possession prohibition within 1,000 feet of a school created by Chapter 96-217, L.O.F. (new).
- ◆ The bill directs 80% of fines collected to be transferred to DOE for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children (new);
- ◆ The bill prohibits any increase in an insurance premium or assessment of points due to license suspension, if the suspension was a result of unlawful possession as provided in this bill (new);
- ◆ The bill provides an increased violation, from 2nd degree to 1st degree misdemeanor, for any person who unlawfully sells tobacco products to a person under 18 for a second or subsequent time within one year of the first violation (similar provision in HB 1255);
- ◆ The bill increases the due diligence standard from 3 violations in 12 weeks to 3 violations in 6 months (similar provision in HB 1255);
- ◆ The bill appropriates \$25,000 from the AB&T TF for printing and mailing revised signs (new);
- ◆ The bill requires the use of a point-of-sale calendar to assist employees in verifying a customer's age (new);
- ◆ The bill requires tobacco products to be sold from "behind, on, above, or below" check-out counter (new);

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- ◆ The bill allows the sale of tobacco products from a vending machine, if equipped with an operational lockout device (HB 845) and removes line of sight requirement;
- ◆ The bill provides an exemption from behind the counter storage for cigars and pipe tobacco (new).

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Legislative Research Director:

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Janet Clark Morris

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Paul Liepshutz