

STORAGE NAME: h0845.rs
DATE: February 27, 1997

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

BILL #: HB 845

RELATING TO: Tobacco Products/Possession by persons under 18 years of age

SPONSOR(S): Representatives Morroni and Saunders

STATUTE(S) AFFECTED: Chapters 569 and 859, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Reorganizes statutory references to the retail sale of tobacco products and attempts to decrease access and possession of tobacco products by persons under the age of 18.

- Retitles Chapter 569 and moves several provisions from Chapter 859 to make Chapter 569 the "Tobacco Products" chapter.
- 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. Establishes a fine and civil citation process for violations.
- Makes law enforcement officers and agents of the Division of Alcoholic Beverages and Tobacco responsible for enforcing the prohibition. Permits counties and municipalities to establish and train tobacco product enforcement officers and limits their powers.
- Makes several technical changes to Chapter 569 in order to make existing provisions applicable to new provisions contained in the bill.
- Mandates the suspension, revocation, or withholding of issuance of the driver license or driving privilege for a person under age 18 who has been found to have committed a violation by possessing or purchasing tobacco products and who fails to comply with statutory requirements.
- Revises dealer requirements for the sale of tobacco products through vending machines.

The bill has an indeterminate revenue impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

- Chapter 569, F.S., is currently titled "Tobacco Products Permits" and regulates sellers of tobacco products. The chapter provides legislative intent and retailer responsibilities to prevent the sale of tobacco products to persons under the age of 18.
- There is no statutory regulation of 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 (Division) 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 Division is responsible for enforcing this provision and noncompliance is deemed a second degree misdemeanor.
- Section 859.058, F.S., prohibits the sale, use, possession, or disposition of clove cigarettes. The prohibition against clove cigarettes was created in Chapter 85-141, L.O.F., and was later ruled unconstitutional by the Circuit Court, 2nd Judicial Circuit, Leon County Florida, which found: 1) the prohibition violated the single subject provision of article III, section 6, of the Florida Constitution, and, 2) the prohibition provided no penalty for the behavior it proscribed, and therefore the prohibition was a nullity. (Joel Calvani, et.al. vs. Howard M. Rasmussen, as Director of the Division of Alcoholic Beverages and Tobacco, Department of Business Regulation, State of Florida, Case #85-1945, Circuit Court for Leon County Florida)
- Section 569.002, F.S., provides the definitions for use in chapter 569.
- Section 569.003, F.S., regulates the issuing of permits to retail tobacco products dealers.
- Section 569.004, F.S., requires retail tobacco product permitholders, by virtue of applying for the license, to allow inspection and warrantless searches of their premises.
- Section 569.006, F.S., gives the Division 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.
- 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.
- Section 569.008, F.S., establishes standards for being a responsible tobacco products dealer. To qualify, a tobacco products dealer must train employees regarding the responsible and legal sale of tobacco products. If the dealer is qualified as a responsible tobacco products dealer, the Division may mitigate

penalties imposed against the dealer due to an employee's illegal sale of a tobacco product.

- Section 569.009, F.S., gives the Division rulemaking authority to administer and enforce Chapter 569.
- 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 driver license or driving privilege for persons under age 18 found guilty or delinquent of certain alcohol or drug offenses.
- Division compliance visits in FY 1994-1995 documented 874 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.

B. EFFECT OF PROPOSED CHANGES:

- Retitles Chapter 569, F.S., to read "Tobacco Products," to signify the transfer of tobacco regulation from Chapter 859, F. S., to the newly designated Chapter 569, F.S.; moves the placement of statutory provisions relating to tobacco products from Chapter 859, F.S., to Chapter 569, F.S.
- 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. Establishes a civil citation process and fines, including a community service option, for violators. Allows law enforcement officers to confiscate tobacco products from the juvenile violator. Under current law it is only unlawful to sell tobacco products to this target audience.
- Allows municipalities and counties to create tobacco product enforcement officers to enforce the new prohibition against persons under age 18.
- County courts have jurisdiction over these cases and must distribute any fines as follows: 20% to cover court administration and 80% to the Grants and Donations Trust Fund of the Agency for Health Care Administration.
- Repeals s. 859.058, F.S., dealing with clove cigarettes.
- Allows tobacco products vending machines to be located out of the line of sight of a dealer for those machines that are equipped with a lock-out device. Specifies that the lock-out device must be under the control of a person of legal age who directly regulates the sale of tobacco products through the machine. Provides that if a tobacco products vending machine is in an establishment that prohibits persons under 18 years of age on the licensed premises, the establishment is not required to locate the machine within the line of sight of the dealer or to equip the machine with a lock-out device.

- Makes the possession or the purchase of tobacco products an offense eligible for mandatory driver license or driving privilege revocation, withholding or suspension and establishes a schedule.
- Requires the Division to report annually to the Governor and the Legislature on implementation of the tobacco access laws.

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. 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 civil penalty.

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 ANALYSIS:

Section 1. Retitles Chapter 569, F.S.

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

Section 2. 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 3.
- Makes a terminology change regarding a violation of the section: from "is guilty of" to "commits."

Section 3. Amends s. 569.002, F.S.

- Makes the definition section applicable to the entire chapter.
- Exempts from the statutory definition of "any person under 18" those who have had the disability of nonage removed under Chapter 743, F.S., [relating to removal of disability of nonage of minors]; or a member of the military; or persons working with law enforcement to enforce the provisions of this chapter; or someone who has otherwise been emancipated by a court of competent jurisdiction. Allows those classes of person to avoid applicability of the tobacco access laws.

Section 4. Creates s. 569.11, F.S.

- Makes it a noncriminal violation punishable by a \$25 fine or community service, as well as confiscation of any tobacco product, for persons under age 18 to knowingly possess a tobacco product, except when acting within the scope of lawful employment.
- Makes it a noncriminal violation punishable by a \$50 fine or community service, as well as confiscation of any tobacco product, 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 employee to sell or furnish the person with a tobacco product or to purchase any tobacco product from a person or vending machine.
- 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. Appearance in court is deemed a waiver of the right to pay the applicable fine as the sole penalty. If the court finds the violation was committed it must impose a fine not to exceed the appropriate statutory fine (\$25 or \$50). The court may also:

- reprimand or counsel the violator and violator's parent or legal guardian;
 - require the violator to attend a public conducted substance abuse program;
 - order the violator to participate in public or community service not to exceed 10 hours, during which time the violator is an employee of the state for purposes of worker's compensation;
- Provides that if the cited person elects not to appear the fine must be paid within 30 days of receiving the citation; payment is deemed an admission of the violation and waiver of the right to a hearing.
 - Provides that if a cited violator fails to pay the assessed fine within 30 days, or fails to appear in court at the specified time, or fails to comply with court ordered sanctions 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.
 - Allocates the civil penalties collected by the county court under this section as: 20 percent to the clerk to cover administrative costs and 80 percent to the Grants and Donations Trust Fund of the Agency for Health Care Administration, both to be distributed monthly.

Section 5. Creates s. 569.12, F.S.

- Specifies that any law enforcement officer certified under s. 943.10(1), (6) or (8), F.S., [relating to full, part time or auxiliary officers] and agents and inspectors of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation will enforce this chapter.
- Permits a county or municipality to designate, qualify, and train employees or agents as tobacco product enforcement officers. Specifies that this does not include the power to carry firearms or other weapons, nor the power to arrest, nor subject the municipal agents to the provisions of s. 943.085 - 943.255, F.S., [relating to the employment and training of law enforcement officers].
- Authorizes the tobacco product enforcement officer to issue citations to persons under age 18 when the officer has reasonable cause to believe the person has violated ss. 569.11 or 569.12, F.S.
- Requires the citation contain certain information.

Section 6. 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 7. 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 8. Amends s. 569.006, F.S.

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

Section 9. Renumbers and amends s. 859.061, F.S., as s. 569.12, F.S.

- Section 859.061, F.S., pertaining to the posting of signs regarding the sale of tobacco products to persons under 18 is renumbered to s. 569.12, F.S.
- Reduces the penalty for noncompliance with this section from a second degree misdemeanor to administrative penalties.
- Makes several technical amendments to conform word usage to other sections of the statute.

Section 10. Repeals s. 859.058, F.S., relating to clove cigarettes.

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

- Amends s. 569.007, F.S., relating to the sale or delivery of tobacco products, to allow the sale of tobacco products through a vending machine if the machine is equipped with a lock-out device which is under the control of a person of legal age. Provides that if the machine is in an establishment that prohibits persons under 18 years of age on the licensed premises, that establishment is not required to locate the machine within the line of sight of the dealer or to equip the machine with a lock-out device.
- The lock-out device must prevent the machine from dispensing more than one product at a time and must prevent the machine from functioning during a power failure or when the device is disabled.

Section 12. Amends s. 569.008, F.S.

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

Section 13. 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 14. Amends s. 322.056, F.S., as amended by Ch. 95-148, L.O.F.

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 associated with monitoring the performance of community service if the court orders such sanctions. 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 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 4 of the bill, which creates the sanctions for minors who access tobacco products, provides that community service may be performed instead of paying a fine. Specifically, it states that community service, *as determined by the Department of Juvenile Justice and administered by the citing law enforcement agency*, it is unclear how this provision is to be implemented and has the potential for disproportionate sanctioning of juveniles.

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, 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 and fine process.*

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 out of the line of sight of the vendor, if the vending machine is equipped with a lock-out 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.

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.].*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Legislative Research Director:

Janet Clark Morris

Paul Liepshutz