

By Representatives Morroni and Saunders

1 A bill to be entitled
2 An act relating to tobacco products;
3 redesignating chapter 569, F.S., as "Tobacco
4 Products"; amending and renumbering s. 859.06,
5 F.S., to clarify language; amending s. 569.002,
6 F.S.; revising definition language to exclude
7 certain classes of persons from definition of
8 "under age 18"; creating s. 569.11, F.S.;
9 making it unlawful for any person under age 18
10 to misrepresent age or military service to
11 acquire, purchase, or knowingly possess any
12 tobacco product and providing for civil
13 citation and imposition of sanctions by court;
14 providing for the disposition of fines;
15 creating s. 569.12, F.S.; providing for
16 enforcement and local tobacco product
17 enforcement officers; providing necessary
18 information for civil citation form; amending
19 ss. 569.003, 569.004, and 569.006, F.S.;
20 clarifying language; renumbering and amending
21 s. 859.061, F.S., relating to posting of signs
22 to conform and clarify language; repealing s.
23 859.058, F.S., relating to clove cigarettes;
24 amending s. 569.007, F.S.; providing an
25 additional exemption from the prohibition
26 against sale or delivery of tobacco products,
27 through vending machines; amending s. 569.008,
28 F.S.; conforming and clarifying language
29 relating to responsible tobacco product
30 dealers; amending s. 569.009, F.S.; conforming
31 and clarifying language relating to rulemaking

1 authority; amending s. 322.056, F.S.; providing
2 for mandatory revocation or suspension of, or
3 delay of eligibility for, drivers' licenses for
4 persons under age 18 who commit noncriminal
5 tobacco violations and fail to comply with
6 corresponding sanctions; creating s. 569.010,
7 F.S.; providing for an annual report; providing
8 an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Chapter 569, Florida Statutes, entitled
13 "Tobacco Products Permits" is retitled "Tobacco Products."

14 Section 2. Section 859.06, Florida Statutes, is
15 renumbered as section 569.101, Florida Statutes, and amended
16 to read:

17 569.101 ~~859.06~~ Selling, delivering, bartering,
18 furnishing, or giving tobacco products ~~and cigarette wrappers~~
19 to persons under 18 years of age; criminal penalties;
20 defense.--

21 (1) It is unlawful to sell, deliver, barter, furnish,
22 or give, directly or indirectly, to any person who is under 18
23 years of age, any ~~cigarette or other~~ tobacco product ~~or~~
24 ~~cigarette wrapper. As used in this section, the word~~
25 ~~"cigarette" includes a clove cigarette or tobacco substitute.~~

26 (2) Any person who violates subsection (1) commits is
27 ~~guilty of~~ a misdemeanor of the second degree, punishable as
28 provided in s. 775.082 or s. 775.083.

29 (3) A person charged with a violation of subsection
30 (1) has a complete defense if, at the time the ~~cigarette or~~
31

1 ~~other~~ tobacco product ~~or cigarette wrapper~~ was sold,
2 delivered, bartered, furnished, or given:

3 (a) The buyer or recipient falsely evidenced that he
4 was 18 years of age or older;

5 (b) The appearance of the buyer or recipient was such
6 that a prudent person would believe the buyer or recipient to
7 be 18 years of age or older; and

8 (c) Such person carefully checked a driver's license
9 or an identification card issued by this state or another
10 state of the United States, a passport, or a United States
11 armed services identification card presented by the buyer or
12 recipient and acted in good faith and in reliance upon the
13 representation and appearance of the buyer or recipient in the
14 belief that the buyer or recipient was 18 years of age or
15 older.

16 Section 3. Section 569.002, Florida Statutes, is
17 amended to read:

18 569.002 Definitions.--As used in this chapter ~~ss.~~
19 ~~569.002-569.009~~, the term:

20 (1) "Dealer" is synonymous with the term "retail
21 tobacco products dealer."

22 (2) "Division" means the Division of Alcoholic
23 Beverages and Tobacco of the Department of Business and
24 Professional Regulation.

25 (3) "Permit" is synonymous with the term "retail
26 tobacco products dealer permit."

27 (4) "Retail tobacco products dealer" means the holder
28 of a retail tobacco products dealer permit.

29 (5) "Retail tobacco products dealer permit" means a
30 permit issued by the division pursuant to s. 569.003.

31

1 (6) "Tobacco products" includes loose tobacco leaves,
2 and products made from tobacco leaves, which can be used for
3 smoking, sniffing, or chewing.

4 (7) "Any person under the age of 18" does not include
5 any person under the age of 18 who:

6 (a) Has had his or her disability of nonage removed
7 under chapter 743;

8 (b) Is in the military reserve or on active duty in
9 the Armed Forces of the United States;

10 (c) Is otherwise emancipated by a court of competent
11 jurisdiction and released from parental care and
12 responsibility; or

13 (d) Is working in conjunction with a law enforcement
14 agency to test the compliance of dealers with this chapter.

15 Section 4. Section 569.11, Florida Statutes, is
16 created to read:

17 569.11 Possession, misrepresenting age to purchase, or
18 misrepresenting military service, and purchase of tobacco
19 products by persons under 18 years of age prohibited;
20 penalties; jurisdiction; disposition of fines.--

21 (1) It is unlawful for any person under 18 years of
22 age to knowingly possess any tobacco product, except a person
23 acting in the scope of his or her lawful employment with an
24 entity licensed under the provisions of chapter 210 or this
25 chapter. Any person under 18 years of age who violates the
26 provisions of this subsection commits a noncriminal violation
27 as provided in s. 775.08(3), punishable by a \$25 fine or
28 community service as determined by the Department of Juvenile
29 Justice and administered by the citing law enforcement agency,
30 and confiscation of the tobacco product.

31

1 (2) It is unlawful for any person under 18 years of
2 age to:

3 (a) Misrepresent his or her age or military service
4 for the purpose of inducing a dealer or an agent or employee
5 of the dealer to sell, give, barter, furnish, or deliver any
6 tobacco product; or

7 (b) Purchase any tobacco product from a person or a
8 vending machine.

9
10 Any person under 18 years of age who violates the provisions
11 of this subsection commits a noncriminal violation as provided
12 in s. 775.08(3), punishable by a \$50 fine or community service
13 as determined by the Department of Juvenile Justice and
14 administered by the citing law enforcement agency, and
15 confiscation of the tobacco product.

16 (3) Any person under 18 years of age cited for
17 committing a noncriminal violation under this section must
18 sign and accept a civil citation indicating a promise to
19 appear before the county court. The officer may indicate on
20 the civil citation the time and location of the scheduled
21 hearing and must indicate the applicable fine.

22 (4) A person charged with a noncriminal violation
23 under this section who does not elect to appear shall pay the
24 applicable fine, either by mail or in person, within 30 days
25 after receiving the civil citation. If the person cited pays
26 the fine as described in this subsection, he or she shall be
27 deemed to have admitted to committing the violation and to
28 have waived the right to a hearing on the issue of whether the
29 noncriminal violation was committed.

30 (5) A person charged with a noncriminal violation
31 under this section who elects to appear before the county

1 court shall be deemed to waive the right to pay the applicable
2 fine as the sole penalty for the violation. The court, after
3 a hearing, shall make a determination as to whether the
4 noncriminal violation was committed. If the court finds the
5 violation was committed, it shall impose a fine not to exceed
6 the amount specified in subsection (1) or subsection (2),
7 depending upon the noncriminal violation committed, and may
8 also impose one or more of the following sanctions:

9 (a) Reprimand or counsel the person and his or her
10 parent or legal guardian.

11 (b) Require the person to attend, for a reasonable
12 period, a substance abuse program conducted by a public
13 authority.

14 (c) Order the person to participate in public service
15 or a community work project for a specified time not exceeding
16 10 hours. A person who participates in such public service or
17 community work project shall be considered an employee of the
18 state for the purpose of chapter 440, for the duration of such
19 service or work.

20 (d) Upon a second or subsequent offense direct the
21 Department of Highway Safety and Motor Vehicles to withhold
22 issuance of, or suspend or revoke, the person's driver's
23 license or driving privilege, as provided in s. 322.056.

24 (6) If a person fails to:

25 (a) Pay the applicable fine within 30 days after
26 receiving the civil citation;

27 (b) Appear before the court at the specified time and
28 place to contest the civil citation; or

29 (c) Comply with any sanction imposed by the court
30 under subsection (5), following the court's determination that
31 a noncriminal violation was committed

1
2 the court must direct the Department of Highway Safety and
3 Motor Vehicles to withhold issuance of, or suspend or revoke,
4 the person's driver's license or driving privilege, for a
5 period of 30 days for a first violation of this subsection and
6 in addition to any other period of revocation as provided in
7 s. 322.056 for subsequent violations.

8 (7) All civil penalties received by a county court
9 pursuant to this section shall be distributed and paid monthly
10 as follows:

11 (a) Twenty percent shall be paid to the clerk of the
12 county court to cover administrative costs.

13 (b) Eighty percent shall be deposited in the Grants
14 and Donations Trust Fund of the Agency for Health Care
15 Administration.

16 Section 5. Section 569.12, Florida Statutes, is
17 created to read:

18 569.12 Jurisdiction; tobacco product enforcement
19 officers or agents; enforcement.--

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

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

1 as a tobacco product enforcement officer provide the employee
2 or agent with the power of arrest or subject the employee or
3 agent to the provisions of ss. 943.085-943.255. Nothing in
4 this section amends, alters, or contravenes the provisions of
5 any state-administered retirement system or any
6 state-supported retirement system established by general law.

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

12 (c) A citation issued by a tobacco product enforcement
13 officer shall be in a form prescribed by the county or
14 municipality and shall contain:

15 1. The date and time of issuance.

16 2. The name and address of the person to whom the
17 citation is issued.

18 3. The date and time the civil infraction was
19 committed.

20 4. The facts constituting reasonable cause.

21 5. The number of the Florida Statute violated.

22 6. The name of the tobacco product enforcement
23 officer.

24 7. The procedure for the person to follow in order to
25 pay the civil penalty or to contest the citation.

26 Section 6. Paragraph (c) of subsection (1) of section
27 569.003, Florida Statutes, is amended to read:

28 569.003 Retail tobacco products dealer permits;
29 application; qualifications; fees; renewal; duplicates.--

30 (1)

31

1 (c) Permits shall be issued annually, ~~beginning~~
2 ~~January 15, 1993~~, upon payment of the annual permit fee
3 prescribed by the division. The division shall fix the fee in
4 an amount sufficient to meet the costs incurred by it in
5 carrying out its permitting, enforcement, and administrative
6 responsibilities under this chapter ~~ss. 569.002-569.009~~, but
7 the fee may not exceed \$50. The proceeds of the fee shall be
8 deposited into the Alcoholic Beverage and Tobacco Trust Fund.

9 Section 7. Section 569.004, Florida Statutes, is
10 amended to read:

11 569.004 Consent to inspection and search without
12 warrant.--An applicant for a permit, by accepting the permit
13 when issued, agrees that the place or premises covered by the
14 permit is subject to inspection and search without a search
15 warrant by the division or its authorized assistants, and by
16 sheriffs, deputy sheriffs, or police officers, to determine
17 compliance with this chapter ~~ss. 569.002-569.009 and ss.~~
18 ~~859.06 and 859.061~~.

19 Section 8. Section 569.006, Florida Statutes, is
20 amended to read:

21 569.006 Retail tobacco products dealers;
22 administrative penalties.--The division may suspend or revoke
23 the permit of the dealer upon sufficient cause appearing of
24 the violation of any of the provisions of this chapter ~~s.~~
25 ~~569.003, s. 569.005, s. 569.007, s. 859.06, or s. 859.061~~, by
26 a dealer or by a dealer's agent or employee. The division may
27 also assess and accept administrative fines of up to \$1,000
28 against a dealer for each violation. The division shall
29 deposit all fines collected into the General Revenue Fund as
30 collected. An order imposing an administrative fine becomes
31 effective 15 days after the date of the order. The division

1 may suspend the imposition of a penalty against a dealer,
2 conditioned upon the dealer's compliance with terms the
3 division considers appropriate.

4 Section 9. Section 859.061, Florida Statutes, is
5 renumbered as section 569.14, Florida Statutes, and amended to
6 read:

7 569.14 ~~859.061~~ Posting of a sign stating that the sale
8 of ~~cigarettes and other~~ tobacco products to persons under 18
9 years of age is unlawful; enforcement; penalty.--

10 (1) Any dealer ~~retailer or owner of a business~~ that
11 sells ~~cigarettes or other~~ tobacco products shall post a clear
12 and conspicuous sign in each place of business where such
13 ~~cigarettes or other tobacco~~ products are sold which states the
14 following:

15
16 THE SALE OF ~~CIGARETTES AND OTHER~~ TOBACCO
17 PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS
18 AGAINST FLORIDA LAW (SECTION 569.101 ~~859.06~~,
19 FLORIDA STATUTES). PROOF OF AGE IS REQUIRED
20 FOR PURCHASE.

21
22 (2) The division of ~~Alcoholic Beverages and Tobacco~~ of
23 ~~the Department of Business and Professional Regulation~~ shall
24 make available to dealers ~~retailers~~ of ~~cigarettes or other~~
25 tobacco products signs that meet the requirements of
26 subsection (1).

27 (3) The division of ~~Alcoholic Beverages and Tobacco~~ of
28 ~~the Department of Business and Professional Regulation~~,
29 through its agents and inspectors, shall enforce this section.

30 (4) Any person who fails to comply with subsection (1)
31 shall be subject to administrative penalties as provided in s.

1 ~~569.006 is guilty of a misdemeanor of the second degree,~~
2 ~~punishable as provided in s. 775.082 or s. 775.083.~~

3 Section 10. Section 859.058, Florida Statutes, is
4 hereby repealed.

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

7 569.007 Sale or delivery of tobacco products;
8 restrictions.--

9 (1) The sale or delivery of tobacco products through a
10 vending machine is prohibited in order to prevent persons
11 under 18 years of age from purchasing or receiving tobacco
12 products through the use of such machines unless the machine:

13 (a) Is located within the unobstructed line of sight
14 of a dealer or a dealer's agent or employee who is responsible
15 for preventing persons under 18 years of age from purchasing
16 tobacco products through that machine; or-

17 (b) Is equipped with a lock-out device which is under
18 the control of a person of legal age who directly regulates
19 the sale of items through the machine by checking users of the
20 vending machine for proof of legal age to purchase products,
21 and if the person is of legal age, triggering the lock-out
22 device to allow the dispensing of one tobacco product. The
23 lock-out device must include, a mechanism to prevent the
24 machine from functioning if the power source for the lock-out
25 device fails or if the lock-out device is disabled, and a
26 mechanism to ensure that only one tobacco product is dispensed
27 at a time.

28 (c) The provisions of this subsection shall not apply
29 to an establishment that prohibits, pursuant to law, persons
30 under 18 years of age on the licensed premises.

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1 Section 12. Section 569.008, Florida Statutes, is
2 amended to read:

3 569.008 Responsible retail tobacco products dealers;
4 qualifications; mitigation of disciplinary penalties.--

5 (1) The Legislature intends to prevent the sale of
6 tobacco products to ~~underage~~ persons under 18 years of age and
7 to encourage retail tobacco products dealers to comply with
8 responsible practices in accordance with this section.

9 (2) To qualify as a responsible retail tobacco
10 products dealer, the dealer must establish and implement
11 procedures designed to ensure that the dealer's employees
12 comply with the provisions of this chapter ~~ss. 569.002-569.009~~
13 ~~and s. 859.06~~. The dealer must provide a training program for
14 the dealer's employees which addresses the use and sale of
15 tobacco products and which includes at least the following
16 topics:

17 (a) Laws covering the sale of tobacco products.

18 (b) Methods of recognizing and handling ~~underage~~
19 customers under 18 years of age.

20 (c) Procedures for proper examination of
21 identification cards in order to verify that customers are not
22 under 18 years of age ~~underage~~.

23 (d) The use of the age audit identification function
24 on electronic point-of-sale equipment, where available.

25 (3) In determining penalties under s. 569.006 ~~s.~~
26 ~~569.005~~, the division may mitigate penalties imposed against a
27 dealer because of an employee's illegal sale of a tobacco
28 product to a person under 18 years of age if the following
29 conditions are met:

30 (a) The dealer is qualified as a responsible dealer
31 under this section.

1 (b) The dealer provided the training program required
2 under subsection (2) to that employee before the illegal sale
3 occurred.

4 (c) The dealer had no knowledge of that employee's
5 violation at the time of the violation and did not direct,
6 approve, or participate in the violation.

7 (d) If the sale was made through a vending machine,
8 the machine was equipped with an operational lock-out device.

9 (4) The division shall develop and make available a
10 model tobacco products training program designed to ensure
11 adherence to this act by dealers and their employees which, if
12 followed, will qualify dealers as responsible dealers.

13 Section 13. Section 569.009, Florida Statutes, is
14 amended to read:

15 569.009 Rulemaking authority.--The division shall
16 adopt any rules necessary to administer and enforce the
17 provisions of this chapter ~~ss. 569.002-569.009~~.

18 Section 14. Section 322.056, Florida Statutes, is
19 amended to read:

20 322.056 Mandatory revocation or suspension of, or
21 delay of eligibility for, driver's license for persons under
22 age 18 found guilty of certain alcohol, or drug, or tobacco
23 offenses.--

24 (1) Notwithstanding the provisions of s. 322.055, if a
25 person under 18 years of age is found guilty of or delinquent
26 for a violation of s. 562.11(2), s. 562.111, or chapter 893,
27 and:

28 (a) The person is eligible by reason of age for a
29 driver's license or driving privilege, the court shall direct
30 the department to revoke or to withhold issuance of his or her
31 driver's license or driving privilege for a period of:

1 1. Not less than 6 months and not more than 1 year for
2 the first violation.

3 2. Two years, for a subsequent violation.

4 (b) The person's driver's license or driving privilege
5 is under suspension or revocation for any reason, the court
6 shall direct the department to extend the period of suspension
7 or revocation by an additional period of:

8 1. Not less than 6 months and not more than 1 year for
9 the first violation.

10 2. Two years, for a subsequent violation.

11 (c) The person is ineligible by reason of age for a
12 driver's license or driving privilege, the court shall direct
13 the department to withhold issuance of his or her driver's
14 license or driving privilege for a period of:

15 1. Not less than 6 months and not more than 1 year
16 after the date on which he would otherwise have become
17 eligible, for the first violation.

18 2. Two years after the date on which he would
19 otherwise have become eligible, for a subsequent violation.

20 (2) If a person under 18 years of age is found by the
21 court to have committed a noncriminal violation under s.
22 569.11 and that person has failed to comply with the
23 procedures established in that section, by either failing to
24 pay the applicable fine on time, failure to appear in court at
25 the specified time or failure to comply with court ordered
26 sanctions, and:

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

31 1. For the second violation, for a 1-month period.

1 2. For the third violation, for a 3-month period.
2 3. For the fourth or subsequent violation, for a
3 6-month period.
4 (b) The person's driver's license or driving privilege
5 is under suspension or revocation for any reason, the court
6 shall direct the department to extend the period of suspension
7 or revocation by an additional period as follows:
8 1. For the second violation, for a 1-month period.
9 2. For the third violation, for a 3-month period.
10 3. For the fourth or subsequent violation, for a
11 6-month period.
12 (c) The person is ineligible by reason of age for a
13 driver's license or driving privilege, the court shall direct
14 the department to withhold issuance of his or her driver's
15 license or driving privilege as follows:
16 1. For the second violation, for a 1-month period.
17 2. For the third violation, for a 3-month period.
18 3. For the fourth or subsequent violation, for a
19 6-month period.
20 ~~(3)(2)~~ A penalty imposed under this section ~~subsection~~
21 ~~(1)~~ shall be in addition to any other penalty imposed by law.
22 Section 15. Section 569.010, Florida Statutes, is
23 created to read:
24 569.010 Annual report.--The division shall report
25 annually with written findings to the Legislature and Governor
26 by December 31, starting with the year 1997, on the progress
27 of implementing the licensing provisions of this chapter.
28 This must include, but is not limited to:
29 (1) The number and results of sting operations.
30 (2) The number of violations for failure of a retailer
31 to hold a valid license.

1 (3) The number of violations for selling tobacco
2 products to persons under age 18, and the results of
3 administrative hearings on the above and related issues.
4 Section 16. This act shall take effect on October 1,
5 1997.

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8 HOUSE SUMMARY

9 Prohibits the purchase or possession of tobacco products
10 by persons under 18 years of age. See bill for details.

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