

By Senator Myers

27-1001-98

See HB

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 LEGISLATIVE SUMMARY

18 Revises provisions that 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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