

By Senator Wise

5-188-07

1 A bill to be entitled
2 An act relating to the minimum age for
3 purchasing or receiving tobacco products;
4 amending s. 386.212, F.S.; prohibiting a person
5 under 21 years of age from smoking tobacco near
6 school property; amending s. 569.002, F.S.;
7 redefining the term "any person under the age
8 of 18"; amending s. 569.007, F.S.; prohibiting
9 a person under 21 years of age from purchasing
10 or receiving tobacco products; amending s.
11 569.0075, F.S.; prohibiting certain entities
12 from giving sample tobacco products to a person
13 under 21 years of age; amending s. 569.008,
14 F.S.; providing legislative intent to prevent
15 the sale of tobacco products to a person under
16 21 years of age; requiring a dealer to provide
17 a training program for employees relating to
18 the age at which a person may purchase tobacco;
19 providing for the mitigation of penalties
20 imposed against a dealer because of an illegal
21 sale of a tobacco product to a person under 21
22 years of age under certain circumstances;
23 amending s. 569.101, F.S.; providing criminal
24 penalties for selling, bartering, furnishing,
25 or giving tobacco products to a person under 21
26 years of age; providing defenses; amending s.
27 569.11, F.S.; revising provisions that prohibit
28 the possession, the misrepresentation of age or
29 military service in order to purchase, and the
30 purchase of tobacco products by persons under
31 21 years of age; amending s. 569.12, F.S.;

1 providing that a tobacco product enforcement
2 officer or correctional probation officer is
3 authorized to issue a citation to a person
4 under 21 years of age under certain
5 circumstances; amending s. 569.14, F.S.;
6 requiring a dealer that sells tobacco products
7 to post a sign stating that the sale of tobacco
8 products to persons under 21 years of age is
9 unlawful; amending s. 569.19, F.S.; requiring
10 the Division of Alcoholic Beverages and Tobacco
11 to report to the Legislature and the Governor
12 certain violations for selling tobacco products
13 to persons under 21 years of age; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (1) of section 386.212, Florida
19 Statutes, is amended to read:

20 386.212 Smoking prohibited near school property;
21 penalty.--

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

28 Section 2. Subsection (7) of section 569.002, Florida
29 Statutes, is amended to read:

30 569.002 Definitions.--As used in this chapter, the
31 term:

1 (7) "Any person under the age of 21 ~~18~~" does not
2 include any person under the age of ~~18~~ who:

3 (a) Eighteen who has had his or her disability of
4 nonage removed under chapter 743;

5 (b) Twenty-one who is in the military reserve or on
6 active duty in the Armed Forces of the United States;

7 (c) Eighteen who is otherwise emancipated by a court
8 of competent jurisdiction and released from parental care and
9 responsibility; or

10 (d) Twenty-one who is acting in his or her scope of
11 lawful employment with an entity licensed under the provisions
12 of chapter 210 or this chapter.

13 Section 3. Subsections (1) and (2) of section 569.007,
14 Florida Statutes, are amended to read:

15 569.007 Sale or delivery of tobacco products;
16 restrictions.--

17 (1) In order to prevent persons under 21 ~~18~~ years of
18 age from purchasing or receiving tobacco products, the sale or
19 delivery of tobacco products is prohibited, except:

20 (a) When under the direct control or line of sight of
21 the dealer or the dealer's agent or employee; or

22 (b) Sales from a vending machine are prohibited under
23 the provisions of paragraph (1)(a) and are only permissible
24 from a machine that is equipped with an operational lockout
25 device which is under the control of the dealer or the
26 dealer's agent or employee who directly regulates the sale of
27 items through the machine by triggering the lockout device to
28 allow the dispensing of one tobacco product. The lockout
29 device must include a mechanism to prevent the machine from
30 functioning if the power source for the lockout device fails
31

1 or if the lockout device is disabled, and a mechanism to
2 ensure that only one tobacco product is dispensed at a time.

3 (2) The provisions of subsection (1) ~~do shall~~ not
4 apply to an establishment that prohibits persons under 21 ~~18~~
5 years of age on the licensed premises.

6 Section 4. Section 569.0075, Florida Statutes, is
7 amended to read:

8 569.0075 Gift of sample tobacco products
9 prohibited.--The gift of sample tobacco products to any person
10 under the age of 21 ~~18~~ by an entity licensed or permitted
11 under the provisions of chapter 210 or this chapter, or by an
12 employee of such entity, is prohibited and is punishable as
13 provided in s. 569.101.

14 Section 5. Subsections (1), (2), and (3) of section
15 569.008, Florida Statutes, are amended to read:

16 569.008 Responsible retail tobacco products dealers;
17 qualifications; mitigation of disciplinary penalties; diligent
18 management and supervision; presumption.--

19 (1) The Legislature intends to prevent the sale of
20 tobacco products to persons under 21 ~~18~~ years of age and to
21 encourage retail tobacco products dealers to comply with
22 responsible practices in accordance with this section.

23 (2) To qualify as a responsible retail tobacco
24 products dealer, the dealer must establish and implement
25 procedures designed to ensure that the dealer's employees
26 comply with the provisions of this chapter. The dealer must
27 provide a training program for the dealer's employees which
28 addresses the use and sale of tobacco products and which
29 includes at least the following topics:

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

31

1 (b) Methods of recognizing and handling customers
2 under 21 ~~18~~ years of age.

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

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

8 (3) In determining penalties under s. 569.006, the
9 division may mitigate penalties imposed against a dealer
10 because of an employee's illegal sale of a tobacco product to
11 a person under 21 ~~18~~ years of age if the following conditions
12 are met:

13 (a) The dealer is qualified as a responsible dealer
14 under this section.

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

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

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

23 Section 6. Section 569.101, Florida Statutes, is
24 amended to read:

25 569.101 Selling, delivering, bartering, furnishing, or
26 giving tobacco products to persons under 21 ~~18~~ years of age;
27 criminal penalties; defense.--

28 (1) It is unlawful to sell, deliver, barter, furnish,
29 or give, directly or indirectly, to any person who is under 21
30 ~~18~~ years of age, any tobacco product.

31

1 (2) Any person who violates subsection (1) commits a
2 misdemeanor of the second degree, punishable as provided in s.
3 775.082 or s. 775.083. However, any person who violates
4 subsection (1) for a second or subsequent time within 1 year
5 of the first violation, commits a misdemeanor of the first
6 degree, punishable as provided in s. 775.082 or s. 775.083.

7 (3) A person charged with a violation of subsection
8 (1) has a complete defense if, at the time the tobacco product
9 was sold, delivered, bartered, furnished, or given:

10 (a) The buyer or recipient falsely evidenced that she
11 or he was 21 ~~18~~ years of age or older;

12 (b) The appearance of the buyer or recipient was such
13 that a prudent person would believe the buyer or recipient to
14 be 21 ~~18~~ years of age or older; and

15 (c) Such person carefully checked a driver's license
16 or an identification card issued by this state or another
17 state of the United States, a passport, or a United States
18 armed services identification card presented by the buyer or
19 recipient and acted in good faith and in reliance upon the
20 representation and appearance of the buyer or recipient in the
21 belief that the buyer or recipient was 21 ~~18~~ years of age or
22 older.

23 Section 7. Section 569.11, Florida Statutes, is
24 amended to read:

25 569.11 Possession, misrepresenting age or military
26 service to purchase, and purchase of tobacco products by
27 persons under 21 ~~18~~ years of age prohibited; penalties;
28 jurisdiction; disposition of fines.--

29 (1) It is unlawful for any person under 21 ~~18~~ years of
30 age to knowingly possess any tobacco product. Any person
31 under 21 ~~18~~ years of age who violates the provisions of this

1 subsection commits a noncriminal violation as provided in s.
2 775.08(3), punishable by:

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

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

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

14
15 Any second or subsequent violation not within the 12-week time
16 period after the first violation is punishable as provided for
17 a first violation.

18 (2) It is unlawful for any person under 21 ~~18~~ years of
19 age to misrepresent his or her age or military service for the
20 purpose of inducing a dealer or an agent or employee of the
21 dealer to sell, give, barter, furnish, or deliver any tobacco
22 product, or to purchase, or attempt to purchase, any tobacco
23 product from a person or a vending machine. Any person under
24 21 ~~18~~ years of age who violates a provision of this subsection
25 commits a noncriminal violation as provided in s. 775.08(3),
26 punishable by:

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

31

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

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

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

12 (3) Any person under 21 ~~18~~ years of age cited for
13 committing a noncriminal violation under this section must
14 sign and accept a civil citation indicating a promise to
15 appear before the county court or comply with the requirement
16 for paying the fine and must attend a school-approved
17 anti-tobacco program, if locally available. If a fine is
18 assessed for a violation of this section, the fine must be
19 paid within 30 days after the date of the citation or, if a
20 court appearance is mandatory, within 30 days after the date
21 of the hearing.

22 (4) A person charged with a noncriminal violation
23 under this section must appear before the county court or
24 comply with the requirement for paying the fine. The court,
25 after a hearing, shall make a determination as to whether the
26 noncriminal violation was committed. If the court finds the
27 violation was committed, it shall impose an appropriate
28 penalty as specified in subsection (1) or subsection (2). A
29 person who participates in community service shall be
30 considered an employee of the state for the purpose of chapter
31 440, for the duration of such service.

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

10 (b) If a person under 21 ~~18~~ years of age is found by
11 the court to have committed a noncriminal violation under this
12 section and that person has failed to pay the applicable fine
13 as required by paragraph (1)(b) or paragraph (2)(b), the court
14 must direct the Department of Highway Safety and Motor
15 Vehicles to withhold issuance of or suspend the driver's
16 license or driving privilege of that person for a period of 45
17 consecutive days.

18 (6) Eighty percent of all civil penalties received by
19 a county court pursuant to this section shall be remitted by
20 the clerk of the court to the Department of Revenue for
21 transfer to the Department of Education to provide for teacher
22 training and for research and evaluation to reduce and prevent
23 the use of tobacco products by children. The remaining 20
24 percent of civil penalties received by a county court pursuant
25 to this section shall remain with the clerk of the county
26 court to cover administrative costs.

27 Section 8. Paragraph (b) of subsection (2) and
28 subsection (3) of section 569.12, Florida Statutes, are
29 amended to read:

30 569.12 Jurisdiction; tobacco product enforcement
31 officers or agents; enforcement.--

1 (2)

2 (b) A tobacco product enforcement officer is
3 authorized to issue a citation to a person under the age of 21
4 ~~18~~ when, based upon personal investigation, the officer has
5 reasonable cause to believe that the person has committed a
6 civil infraction in violation of s. 386.212 or s. 569.11.

7 (3) A correctional probation officer as defined in s.
8 943.10(3) is authorized to issue a citation to a person under
9 the age of 21 ~~18~~ when, based upon personal investigation, the
10 officer has reasonable cause to believe that the person has
11 committed a civil infraction in violation of s. 569.11.

12 Section 9. Section 569.14, Florida Statutes, is
13 amended to read:

14 569.14 Posting of a sign stating that the sale of
15 tobacco products to persons under 21 ~~18~~ years of age is
16 unlawful; enforcement; penalty.--

17 (1) Any dealer that sells tobacco products shall post
18 a clear and conspicuous sign in each place of business where
19 such products are sold which substantially states the
20 following:

21
22 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER
23 THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF
24 OF AGE IS REQUIRED FOR PURCHASE.

25
26 (2) The division shall make available to dealers of
27 tobacco products signs that meet the requirements of
28 subsection (1).

29 (3) Any dealer that sells tobacco products shall
30 provide at the checkout counter in a location clearly visible
31 to the dealer, the dealer's agent or employee, instructional

1 material in a calendar format or similar format to assist in
2 determining whether a person is of legal age to purchase
3 tobacco products. This point of sale material must contain
4 substantially the following language:

5
6 IF YOU WERE NOT BORN BEFORE THIS DATE
7 (insert date and applicable year)
8 YOU CANNOT BUY TOBACCO PRODUCTS.
9

10 Upon approval by the division, in lieu of a calendar a dealer
11 may use card readers, scanners, or other electronic or
12 automated systems that can verify whether a person is of legal
13 age to purchase tobacco products. Failure to comply with the
14 provisions contained in this subsection shall result in
15 imposition of administrative penalties as provided in s.
16 569.006.

17 (4) The division, through its agents and inspectors,
18 shall enforce this section.

19 (5) Any person who fails to comply with subsection (1)
20 is guilty of a misdemeanor of the second degree, punishable as
21 provided in s. 775.082 or s. 775.083.

22 Section 10. Subsections (3) and (4) of section 569.19,
23 Florida Statutes, are amended to read:

24 569.19 Annual report.--The division shall report
25 annually with written findings to the Legislature and the
26 Governor by December 31, starting with the year 1997, on the
27 progress of implementing the enforcement provisions of this
28 chapter. This must include, but is not limited to:

29 (3) The number of violations for selling tobacco
30 products to persons under the age of 21 ~~18~~, and the results of
31 administrative hearings on the above and related issues.

1 (4) The number of persons under the age of 21 ~~18~~ cited
2 for violations of s. 569.11 and sanctions imposed as a result
3 of citation.

4 Section 11. This act shall take effect July 1, 2007.

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7 SENATE SUMMARY

8 Prohibits a person under 21 years of age from smoking
9 tobacco near school property. Revises the definition of
10 the term "any person under the age of 18." Prohibits a
11 person under 21 years of age from purchasing or receiving
12 tobacco products. Provides that certain entities may not
13 give sample tobacco products to a person under 21 years
14 of age. Provides legislative intent to prevent the sale
15 of tobacco products to a person under 21 years of age.
16 Requires a dealer to provide a training program for
17 employees relating to the age at which a person may
18 purchase tobacco. Provides for the mitigation of
19 penalties imposed against a dealer because of an illegal
20 sale of a tobacco product to a person under 21 years of
21 age under certain circumstances. Provides criminal
22 penalties for the selling, bartering, furnishing, or
23 giving of tobacco products to a person under 21 years of
24 age. Provides defenses. Revises provisions that prohibit
25 the possession, the misrepresentation of age or military
26 service in order to purchase, and the purchase of tobacco
27 products by persons under 21 years of age. Provides that
28 a tobacco product enforcement officer or correctional
29 probation officer is authorized to issue a citation to a
30 person under 21 years of age under certain circumstances.
31 Requires a dealer that sells tobacco products to post a
sign stating that the sale of tobacco products to persons
under 21 years of age is unlawful. Requires the Division
of Alcoholic Beverages and Tobacco to report to the
Legislature and the Governor certain violations for
selling tobacco products to persons under 21 years of
age.