

By Senator Benacquisto

30-00133A-14

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1                   A bill to be entitled  
2           An act relating to alternative nicotine products;  
3           amending s. 569.002, F.S.; providing and revising  
4           definitions; amending s. 569.0075, F.S.; prohibiting  
5           the gift of sample alternative nicotine products to  
6           persons younger than 18 years of age; amending s.  
7           569.101, F.S.; prohibiting the sale, delivery,  
8           bartering, furnishing, or giving of alternative  
9           nicotine products to persons younger than 18 years of  
10          age; amending s. 569.11, F.S.; prohibiting a person  
11          who is younger than 18 years of age from buying,  
12          possessing, or misrepresenting his or her age in order  
13          to buy alternative nicotine products; amending s.  
14          569.14, F.S.; revising the contents of signs that must  
15          be displayed at locations where alternative nicotine  
16          products are available for purchase; reenacting s.  
17          322.056(2) and (3), F.S., relating to mandatory driver  
18          license revocation or suspension for persons younger  
19          than 18 years of age who commit certain offenses, to  
20          incorporate changes made by the act to s. 569.11,  
21          F.S., in a reference thereto; providing an effective  
22          date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Section 569.002, Florida Statutes, is amended to  
27 read:

28           569.002 Definitions.—

29           (1) As used in this chapter, the term:

30-00133A-14

2014224\_\_

30        (a) "Alternative nicotine product" means a product that  
31 consists of or contains nicotine that can be ingested into the  
32 body by any means, including, but not limited to, chewing,  
33 smoking, absorbing, dissolving, and inhaling. The term includes  
34 an electronic cigarette, but does not include any of the  
35 following:

36            1. Tobacco products.

37            2. A product that is a drug as defined in 21 U.S.C. s.  
38 321(g) (1).

39            3. A product that is a device as defined in 21 U.S.C. s.  
40 321(h).

41            4. A combination product that is a device regulated under  
42 21 U.S.C. s. 353(g).

43            ~~(1) "Dealer" is synonymous with the term "retail tobacco~~  
44 ~~products dealer."~~

45            (b)~~(2)~~ "Division" means the Division of Alcoholic Beverages  
46 and Tobacco of the Department of Business and Professional  
47 Regulation.

48            (c) "Electronic cigarette" means a device or product that  
49 produces a vapor that delivers nicotine or other substances to a  
50 person inhaling from the device to simulate smoking and that is  
51 offered to or purchased by consumers as an electronic cigarette,  
52 electronic cigar, electronic cigarillo, electronic pipe, or  
53 other similar device or product.

54            ~~(3) "Permit" is synonymous with the term "retail tobacco~~  
55 ~~products dealer permit."~~

56            (d)~~(4)~~ "Retail tobacco products dealer" or "dealer" means  
57 the holder of a retail tobacco products dealer permit.

58            (e)~~(5)~~ "Retail tobacco products dealer permit" or "permit"

30-00133A-14

2014224\_\_

59 means a permit issued by the division pursuant to s. 569.003.

60 (f)~~(6)~~ "Tobacco products" includes loose tobacco leaves,  
61 and products made from tobacco leaves, in whole or in part, and  
62 cigarette wrappers, which can be used for smoking, sniffing, or  
63 chewing.

64 (2)~~(7)~~ The term "Any person under the age of 18" does not  
65 include a ~~any~~ person under the age of 18 who:

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

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

70 (c) Is otherwise emancipated by a court of competent  
71 jurisdiction and released from parental care and responsibility;  
72 or

73 (d) Is acting in his or her scope of lawful employment with  
74 an entity licensed under the provisions of chapter 210 or this  
75 chapter.

76 Section 2. Section 569.0075, Florida Statutes, is amended  
77 to read:

78 569.0075 Sample gifts of ~~Gift of sample~~ tobacco products or  
79 alternative nicotine products prohibited.—The gift of sample  
80 tobacco products or alternative nicotine products to a ~~any~~  
81 person under the age of 18 by an entity licensed or permitted  
82 under ~~the provisions of~~ chapter 210 or this chapter, or by an  
83 employee of such entity, is prohibited and is punishable as  
84 provided in s. 569.101.

85 Section 3. Section 569.101, Florida Statutes, is amended to  
86 read:

87 569.101 Selling, delivering, bartering, furnishing, or

30-00133A-14

2014224\_\_

88 giving tobacco products or alternative nicotine products to  
89 persons under 18 years of age; criminal penalties; defense.—

90 (1) It is unlawful to sell, deliver, barter, furnish, or  
91 give, directly or indirectly, to a ~~any~~ person who is under 18  
92 years of age, any tobacco product or alternative nicotine  
93 product.

94 (2) A ~~Any~~ person who violates subsection (1) commits a  
95 misdemeanor of the second degree, punishable as provided in s.  
96 775.082 or s. 775.083. However, a ~~any~~ person who violates  
97 subsection (1) for a second or subsequent time within 1 year of  
98 the first violation, commits a misdemeanor of the first degree,  
99 punishable as provided in s. 775.082 or s. 775.083.

100 (3) A person charged with a violation of subsection (1) has  
101 a complete defense if, at the time the tobacco product or  
102 alternative nicotine product was sold, delivered, bartered,  
103 furnished, or given:

104 (a) The buyer or recipient falsely evidenced that she or he  
105 was 18 years of age or older;

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

109 (c) Such person carefully checked a driver ~~driver's~~ license  
110 or an identification card issued by this state or another state  
111 of the United States, a passport, or a United States armed  
112 services identification card presented by the buyer or recipient  
113 and acted in good faith and in reliance upon the representation  
114 and appearance of the buyer or recipient in the belief that the  
115 buyer or recipient was 18 years of age or older.

116 Section 4. Section 569.11, Florida Statutes, is amended to

30-00133A-14

2014224\_\_

117 read:

118 569.11 Possession, misrepresenting age or military service  
119 to purchase, and purchase of tobacco products or alternative  
120 nicotine products by persons under 18 years of age prohibited;  
121 ~~penalties; jurisdiction; disposition of fines.-~~

122 (1) It is unlawful for a ~~any~~ person under 18 years of age  
123 to knowingly possess any tobacco product or alternative nicotine  
124 product. A ~~Any~~ person under 18 years of age who violates ~~the~~  
125 ~~provisions of~~ this subsection commits a noncriminal violation as  
126 provided in s. 775.08(3), punishable by:

127 (a) For a first violation, 16 hours of community service  
128 ~~or, instead of community service,~~ a \$25 fine. ~~In addition,~~ The  
129 person must also attend a school-approved anti-tobacco program,  
130 if locally available;

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

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

138

139 A ~~Any~~ second or subsequent violation not within the 12-week time  
140 period after the first violation is punishable as provided for a  
141 first violation.

142 (2) It is unlawful for a ~~any~~ person under 18 years of age  
143 to misrepresent his or her age or military service for the  
144 purpose of inducing a dealer or an agent or employee of the  
145 dealer to sell, give, barter, furnish, or deliver any tobacco

30-00133A-14

2014224\_\_

146 product or alternative nicotine product, or to purchase, or  
147 attempt to purchase, any tobacco product or alternative nicotine  
148 product from a person or a vending machine. A ~~Any~~ person under  
149 18 years of age who violates ~~a provision of~~ this subsection  
150 commits a noncriminal violation as provided in s. 775.08(3),  
151 punishable by:

152 (a) For a first violation, 16 hours of community service  
153 ~~or, instead of community service, a \$25 fine. and, in addition,~~  
154 The person must also attend a school-approved anti-tobacco  
155 program, if available;

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

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

163  
164 A ~~Any~~ second or subsequent violation not within the 12-week time  
165 period after the first violation is punishable as provided for a  
166 first violation.

167 (3) A ~~Any~~ person ~~under 18 years of age~~ cited for committing  
168 a noncriminal violation under this section must sign and accept  
169 a civil citation indicating a promise to appear before the  
170 county court or pay ~~comply with the requirement for paying~~ the  
171 fine and must attend a school-approved anti-tobacco program, if  
172 locally available. If a fine is assessed for a violation of this  
173 section, the fine must be paid within 30 days after the date of  
174 the citation or, if a court appearance is mandatory, within 30

30-00133A-14

2014224\_\_

175 days after the date of the hearing.

176 (4) A person charged with a noncriminal violation under  
177 this section must appear before the county court or pay ~~comply~~  
178 ~~with the requirement for paying~~ the fine. The court, after a  
179 hearing, shall determine ~~make a determination as to~~ whether the  
180 noncriminal violation was committed. If the court finds the  
181 violation was committed, it shall impose an appropriate penalty  
182 as specified in subsection (1) or subsection (2). A person who  
183 participates in community service is ~~shall be~~ considered an  
184 employee of the state for the purpose of chapter 440, for the  
185 duration of such service.

186 (5) ~~(a)~~ If a person ~~under 18 years of age~~ is found by the  
187 court to have committed a noncriminal violation under this  
188 section and that person has failed to:

189 (a) Complete community service, pay the fine as required by  
190 paragraph (1) (a) or paragraph (2) (a), or attend a school-  
191 approved anti-tobacco program, if locally available, the court  
192 must direct the Department of Highway Safety and Motor Vehicles  
193 to withhold issuance of or suspend the driver ~~driver's~~ license  
194 or driving privilege of that person for ~~a period of~~ 30  
195 consecutive days.

196 (b) ~~If a person under 18 years of age is found by the court~~  
197 ~~to have committed a noncriminal violation under this section and~~  
198 ~~that person has failed to~~ Pay the applicable fine as required by  
199 paragraph (1) (b) or paragraph (2) (b), the court must direct the  
200 Department of Highway Safety and Motor Vehicles to withhold  
201 issuance of or suspend the driver ~~driver's~~ license or driving  
202 privilege of that person for ~~a period of~~ 45 consecutive days.

203 (6) Eighty percent of all civil penalties received by a

30-00133A-14

2014224\_\_

204 county court pursuant to this section shall be remitted by the  
205 clerk of the court to the Department of Revenue for transfer to  
206 the Department of Education to provide for teacher training and  
207 for research and evaluation to reduce and prevent the use of  
208 tobacco products by minors ~~children~~. The remaining 20 percent ~~of~~  
209 ~~civil penalties received by a county court pursuant to this~~  
210 ~~section~~ shall remain with the clerk of the county court to cover  
211 administrative costs.

212 Section 5. Section 569.14, Florida Statutes, is amended to  
213 read:

214 569.14 Posting of a sign stating that the sale of tobacco  
215 products or alternative nicotine products to persons under 18  
216 years of age is unlawful; enforcement; penalty.-

217 (1) A ~~Any~~ dealer that sells tobacco products or alternative  
218 nicotine products shall post a clear and conspicuous sign in  
219 each place of business where such products are sold which  
220 substantially states the following:

221  
222 THE SALE OF TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE  
223 PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST  
224 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.  
225

226 (2) The division shall make signs available to dealers of  
227 tobacco products or alternative nicotine products which ~~signs~~  
228 ~~that~~ meet the requirements of subsection (1).

229 (3) A ~~Any~~ dealer that sells tobacco products or alternative  
230 nicotine products shall provide at the checkout counter in a  
231 location clearly visible to the dealer, the dealer's agent, or  
232 employee, instructional material in a calendar format or similar



30-00133A-14

2014224\_\_

233 format to assist in determining whether a person is of legal age  
234 to purchase tobacco products or alternative nicotine products.  
235 This point of sale material must contain substantially the  
236 following language:

237

238 IF YOU WERE NOT BORN BEFORE THIS DATE

239 (insert date and applicable year)

240 YOU CANNOT BUY TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE  
241 PRODUCTS.

242

243 Upon approval by the division, in lieu of a calendar, a dealer  
244 may use card readers, scanners, or other electronic or automated  
245 systems that can verify whether a person is of legal age to  
246 purchase tobacco products or alternative nicotine products.  
247 Failure to comply with ~~the provisions contained in this~~  
248 subsection shall result in ~~imposition of~~ administrative  
249 penalties as provided in s. 569.006.

250 (4) The division, ~~through its agents and inspectors,~~ shall  
251 enforce this section through its agents and inspectors.

252 (5) A ~~Any~~ person who fails to comply with subsection (1)  
253 commits ~~is guilty of~~ a misdemeanor of the second degree,  
254 punishable as provided in s. 775.082 or s. 775.083.

255 Section 6. For the purpose of incorporating the amendments  
256 made by this act to section 569.11, Florida Statutes, in a  
257 reference thereto, subsections (2) and (3) of section 322.056,  
258 Florida Statutes, are reenacted to read:

259 322.056 Mandatory revocation or suspension of, or delay of  
260 eligibility for, driver's license for persons under age 18 found  
261 guilty of certain alcohol, drug, or tobacco offenses;

30-00133A-14

2014224\_\_

262 prohibition.—

263 (2) If a person under 18 years of age is found by the court  
264 to have committed a noncriminal violation under s. 569.11 and  
265 that person has failed to comply with the procedures established  
266 in that section by failing to fulfill community service  
267 requirements, failing to pay the applicable fine, or failing to  
268 attend a locally available school-approved anti-tobacco program,  
269 and:

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

- 274 1. For the first violation, for 30 days.
- 275 2. For the second violation within 12 weeks of the first  
276 violation, for 45 days.

277 (b) The person's driver's license or driving privilege is  
278 under suspension or revocation for any reason, the court shall  
279 direct the department to extend the period of suspension or  
280 revocation by an additional period as follows:

- 281 1. For the first violation, for 30 days.
- 282 2. For the second violation within 12 weeks of the first  
283 violation, for 45 days.

284 (c) The person is ineligible by reason of age for a  
285 driver's license or driving privilege, the court shall direct  
286 the department to withhold issuance of his or her driver's  
287 license or driving privilege as follows:

- 288 1. For the first violation, for 30 days.
- 289 2. For the second violation within 12 weeks of the first  
290 violation, for 45 days.

30-00133A-14

2014224\_\_

291

292 Any second violation of s. 569.11 not within the 12-week period  
293 after the first violation will be treated as a first violation  
294 and in the same manner as provided in this subsection.

295 (3) If a person under 18 years of age is found by the court  
296 to have committed a third violation of s. 569.11 within 12 weeks  
297 of the first violation, the court must direct the Department of  
298 Highway Safety and Motor Vehicles to suspend or withhold  
299 issuance of his or her driver's license or driving privilege for  
300 60 consecutive days. Any third violation of s. 569.11 not within  
301 the 12-week period after the first violation will be treated as  
302 a first violation and in the same manner as provided in  
303 subsection (2).

304 Section 7. This act shall take effect July 1, 2014.