



123848

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: 1/AD/2R

.

04/29/2019 01:58 PM

.

.

---

Senator Simmons moved the following:

**Senate Amendment (with title amendment)**

Delete lines 59 - 548

and insert:

Section 2. Section 163.085, Florida Statutes, is created to read:

163.085 Preemption of the establishment of the minimum age for tobacco products, nicotine products, or nicotine dispensing devices, and the regulation of marketing of such products.-

(1) DEFINITIONS.-As used in this section, the term:

(a) "Local government" means a county, municipality, or



123848

12 special district.

13 (b) "Minimum age" means the lawful age to purchase or  
14 knowingly possess tobacco products, nicotine products, or  
15 nicotine dispensing devices.

16 (c) "Nicotine dispensing device" has the same meaning as in  
17 s. 877.112.

18 (d) "Nicotine product" has the same meaning as in s.  
19 877.112.

20 (e) "Retail licensure" means any certification,  
21 registration, or license that is required for a person, firm,  
22 association, or corporation to deal, at retail, with or  
23 regarding any tobacco products.

24 (f) "Tobacco products" has the same meaning as in s.  
25 569.002.

26 (2) PREEMPTION.—The establishment of the minimum age for  
27 the sale and delivery of tobacco products, nicotine products, or  
28 nicotine dispensing devices, and the regulation of the marketing  
29 of such products, is preempted to the state. Nothing in this  
30 section shall be construed to affect a local government's  
31 ability to require retail licensure for the sale of tobacco  
32 products.

33 Section 3. Present paragraphs (b) through (f) of subsection  
34 (1) of section 210.095, Florida Statutes, are redesignated as  
35 paragraphs (a) through (e), respectively, a new paragraph (f) is  
36 added to that section, and present paragraph (a) of subsection  
37 (1), paragraph (c) of subsection (2), paragraph (a) of  
38 subsection (3), paragraph (a) of subsection (4), subsection (5),  
39 and paragraphs (a), (b), (e), and (g) of subsection (8) of that  
40 section are amended, to read:



123848

41 210.095 Mail order, Internet, and remote sales of tobacco  
42 products; age verification.—

43 (1) For purposes of this section, the term:

44 ~~(a) "Adult" means an individual who is at least of the~~  
45 ~~legal minimum purchase age for tobacco products.~~

46 (f) "The minimum age for purchase" means 21 years of age.

47 (2)

48 (c) A person may not make a delivery sale of tobacco  
49 products to any individual who is not the minimum age for  
50 purchase an adult.

51 (3) A person may not mail, ship, or otherwise deliver  
52 tobacco products in connection with an order for a delivery sale  
53 unless, before the first delivery to the consumer, the person  
54 accepting the order for the delivery sale:

55 (a) Obtains from the individual submitting the order a  
56 certification that includes:

57 1. Reliable confirmation that the individual is the minimum  
58 age for purchase an adult; and

59 2. A statement signed by the individual in writing and  
60 under penalty of perjury which:

61 a. Certifies the address and date of birth of the  
62 individual; and

63 b. Confirms that the individual wants to receive delivery  
64 sales from a tobacco company and understands that, under the  
65 laws of this state, the following actions are illegal:

66 (I) Signing another individual's name to the certification;

67 (II) Selling tobacco products to individuals under the  
68 legal minimum purchase age; and

69 (III) Purchasing tobacco products, if the person making the



123848

70 purchase is under the legal minimum purchase age.

71

72 In addition to the requirements of this subsection, a person  
73 accepting an order for a delivery sale may request that a  
74 consumer provide an electronic mail address.

75 (4) The notice described in paragraph (3)(c) must include  
76 prominent and clearly legible statements that sales of tobacco  
77 products are:

78 (a) Illegal if made to individuals who are not the minimum  
79 age for purchase ~~adults~~.

80

81 The notice must include an explanation of how each tax has been,  
82 or is to be, paid with respect to the delivery sale.

83 (5) Each person who mails, ships, or otherwise delivers  
84 tobacco products in connection with an order for a delivery sale  
85 must:

86 (a) Include as part of the shipping documents, in a clear  
87 and conspicuous manner, the following statement: "Tobacco  
88 Products: Florida law prohibits shipping to individuals under 21  
89 ~~18~~ years of age and requires the payment of all applicable  
90 taxes."

91 (b) Use a method of mailing, shipping, or delivery which  
92 obligates the delivery service to require:

93 1. The individual submitting the order for the delivery  
94 sale or another individual who is the minimum age for purchase  
95 ~~adult~~ who resides at the individual's address to sign his or her  
96 name to accept delivery of the shipping container. Proof of the  
97 legal minimum purchase age of the individual accepting delivery  
98 is required only if the individual appears to be under 27 years



123848

99 of age.

100 2. Proof that the individual is either the addressee or the  
101 individual who is the minimum age for purchase ~~adult~~ designated  
102 by the addressee, in the form of a valid, government-issued  
103 identification card bearing a photograph of the individual who  
104 signs to accept delivery of the shipping container.

105 (c) Provide to the delivery service, if such service is  
106 used, evidence of full compliance with subsection (7).

107

108 If the person accepting a purchase order for a delivery sale  
109 delivers the tobacco products without using a delivery service,  
110 the person must comply with all of the requirements of this  
111 section which apply to a delivery service. Any failure to comply  
112 with a requirement of this section constitutes a violation  
113 thereof.

114 (8) (a) Except as otherwise provided in this section, a  
115 violation of this section by a person other than an individual  
116 who is not the minimum age for purchase ~~an adult~~ is a  
117 misdemeanor of the first degree, punishable as provided in s.  
118 775.082 or s. 775.083, and:

119 1. For a first violation of this section, the person shall  
120 be fined \$1,000 or five times the retail value of the tobacco  
121 products involved in the violation, whichever is greater.

122 2. For a second or subsequent violation of this section,  
123 the person shall be fined \$5,000 or five times the retail value  
124 of the tobacco products involved in the violation, whichever is  
125 greater.

126 (b) A person who is the minimum age for purchase ~~an adult~~  
127 and knowingly submits a false certification under subsection (3)



123848

128 commits a misdemeanor of the first degree, punishable as  
129 provided in s. 775.082 or s. 775.083. For each offense, the  
130 person shall be fined \$10,000 or five times the retail value of  
131 the tobacco products involved in the violation, whichever is  
132 greater.

133 (e) A person who, in connection with a delivery sale,  
134 delivers tobacco products on behalf of a delivery service to an  
135 individual who is not the minimum age for purchase ~~an adult~~  
136 commits a misdemeanor of the third degree, punishable as  
137 provided in s. 775.082 or s. 775.083.

138 (g) An individual who is not the minimum age for purchase  
139 ~~an adult~~ and who knowingly violates any provision of this  
140 section commits a misdemeanor of the third degree, punishable as  
141 provided in s. 775.082 or s. 775.083.

142 Section 4. Subsection (1) of section 386.212, Florida  
143 Statutes, is amended to read:

144 386.212 Smoking prohibited near school property; penalty.-

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

151 Section 5. Present subsections (3) through (7) of section  
152 569.002, Florida Statutes, are redesignated as subsections (4)  
153 through (8), respectively, a new subsection (3) is added to that  
154 section, and present subsection (7) is amended, to read:

155 569.002 Definitions.-As used in this chapter, the term:

156 (3) "The minimum age for purchase" means 21 years of age.



123848

157            ~~(8)-(7)~~ "Any person under the minimum age of purchase 18"  
158 does not include any person under the minimum age of purchase 18  
159 who:

160            ~~(a) Has had his or her disability of nonage removed under~~  
161 ~~chapter 743;~~

162            ~~(a)-(b)~~ Is in the military reserve or on active duty in the  
163 Armed Forces of the United States; or

164            ~~(c) Is otherwise emancipated by a court of competent~~  
165 ~~jurisdiction and released from parental care and responsibility;~~  
166 ~~or~~

167            ~~(b)-(d)~~ Is acting in his or her scope of lawful employment  
168 with an entity licensed under the provisions of chapter 210 or  
169 this chapter.

170            Section 6. Subsections (1) and (2) of section 569.007,  
171 Florida Statutes, are amended to read:

172            569.007 Sale or delivery of tobacco products;  
173 restrictions.-

174            (1) In order to prevent persons under the minimum age of  
175 purchase 18 years of age from purchasing or receiving tobacco  
176 products, the sale or delivery of tobacco products is  
177 prohibited, except:

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

180            (b) Sales from a vending machine are prohibited under the  
181 provisions of paragraph (1) (a) and are only permissible from a  
182 machine that is equipped with an operational lockout device  
183 which is under the control of the dealer or the dealer's agent  
184 or employee who directly regulates the sale of items through the  
185 machine by triggering the lockout device to allow the dispensing



186 of one tobacco product. The lockout device must include a  
187 mechanism to prevent the machine from functioning if the power  
188 source for the lockout device fails or if the lockout device is  
189 disabled, and a mechanism to ensure that only one tobacco  
190 product is dispensed at a time.

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

194 Section 7. Section 569.0075, Florida Statutes, is amended  
195 to read:

196 569.0075 Gift of sample tobacco products prohibited.—The  
197 gift of sample tobacco products to any person under the minimum  
198 age for purchase ~~age of 18~~ by an entity licensed or permitted  
199 under the provisions of chapter 210 or this chapter, or by an  
200 employee of such entity, is prohibited and is punishable as  
201 provided in s. 569.101.

202 Section 8. Subsections (1), (2), and (3) of section  
203 569.008, Florida Statutes, are amended to read:

204 569.008 Responsible retail tobacco products dealers;  
205 qualifications; mitigation of disciplinary penalties; diligent  
206 management and supervision; presumption.—

207 (1) The Legislature intends to prevent the sale of tobacco  
208 products to persons under the minimum age for purchase ~~18 years~~  
209 ~~of age~~ and to encourage retail tobacco products dealers to  
210 comply with responsible practices in accordance with this  
211 section.

212 (2) To qualify as a responsible retail tobacco products  
213 dealer, the dealer must establish and implement procedures  
214 designed to ensure that the dealer's employees comply with the





123848

215 provisions of this chapter. The dealer must provide a training  
216 program for the dealer's employees which addresses the use and  
217 sale of tobacco products and which includes at least the  
218 following topics:

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

220 (b) Methods of recognizing and handling customers under the  
221 minimum age for purchase ~~18 years of age~~.

222 (c) Procedures for proper examination of identification  
223 cards in order to verify that customers are not under the  
224 minimum age for purchase ~~18 years of age~~.

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

227 (3) In determining penalties under s. 569.006, the division  
228 may mitigate penalties imposed against a dealer because of an  
229 employee's illegal sale of a tobacco product to a person under  
230 the minimum age for purchase ~~18 years of age~~ if the following  
231 conditions are met:

232 (a) The dealer is qualified as a responsible dealer under  
233 this section.

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

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

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

242 Section 9. Section 569.101, Florida Statutes, is amended to  
243 read:



123848

244           569.101 Selling, delivering, bartering, furnishing, or  
245 giving tobacco products to persons under the minimum age for  
246 purchase ~~18 years of age~~; criminal penalties; defense.—

247           (1) It is unlawful to sell, deliver, barter, furnish, or  
248 give, directly or indirectly, to any person who is under the  
249 minimum age for purchase ~~18 years of age~~, any tobacco product.

250           (2) Any person who violates subsection (1) commits a  
251 misdemeanor of the second degree, punishable as provided in s.  
252 775.082 or s. 775.083. However, any person who violates  
253 subsection (1) for a second or subsequent time within 1 year of  
254 the first violation, commits a misdemeanor of the first degree,  
255 punishable as provided in s. 775.082 or s. 775.083.

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

259           (a) The buyer or recipient falsely evidenced that she or he  
260 was the minimum age for purchase ~~18 years of age~~ or older;

261           (b) The appearance of the buyer or recipient was such that  
262 a prudent person would believe the buyer or recipient to be the  
263 minimum age for purchase ~~18 years of age~~ or older; and

264           (c) Such person carefully checked a driver license or an  
265 identification card issued by this state or another state of the  
266 United States, a passport, or a United States armed services  
267 identification card presented by the buyer or recipient and  
268 acted in good faith and in reliance upon the representation and  
269 appearance of the buyer or recipient in the belief that the  
270 buyer or recipient was the minimum age for purchase ~~18 years of~~  
271 ~~age~~ or older.

272           Section 10. Section 569.11, Florida Statutes, is amended to



123848

273 read:

274 569.11 Possession, Misrepresenting age or military service  
275 to purchase, and purchase of tobacco products by persons under  
276 the minimum age for purchase ~~18 years of age~~ prohibited;  
277 penalties; jurisdiction; disposition of fines.-

278 (1) It is unlawful for any person under the minimum age for  
279 purchase ~~18 years of age~~ to knowingly possess any tobacco  
280 product. Any person under the minimum age for purchase ~~18 years~~  
281 ~~of age~~ who violates the provisions of this subsection commits a  
282 noncriminal violation as provided in s. 775.08(3), punishable  
283 by:

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

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

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

295  
296 Any second or subsequent violation not within the 12-week time  
297 period after the first violation is punishable as provided for a  
298 first violation.

299 (2) It is unlawful for any person under the minimum age for  
300 purchase ~~18 years of age~~ to misrepresent his or her age or  
301 military service for the purpose of inducing a dealer or an



123848

302 agent or employee of the dealer to sell, give, barter, furnish,  
303 or deliver any tobacco product, or to purchase, or attempt to  
304 purchase, any tobacco product from a person or a vending  
305 machine. Any person under the minimum age for purchase ~~18 years~~  
306 ~~of age~~ who violates a provision of this subsection commits a  
307 noncriminal violation as provided in s. 775.08(3), punishable  
308 by:

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

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

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

320  
321 Any second or subsequent violation not within the 12-week time  
322 period after the first violation is punishable as provided for a  
323 first violation.

324 (3) Any person under the minimum age for purchase ~~18 years~~  
325 ~~of age~~ cited for committing a noncriminal violation under this  
326 section must sign and accept a civil citation indicating a  
327 promise to appear before the county court or comply with the  
328 requirement for paying the fine and must attend a school-  
329 approved anti-tobacco program, if locally available. If a fine  
330 is assessed for a violation of this section, the fine must be



123848

331 paid within 30 days after the date of the citation or, if a  
332 court appearance is mandatory, within 30 days after the date of  
333 the hearing.

334 (4) A person charged with a noncriminal violation under  
335 this section must appear before the county court or comply with  
336 the requirement for paying the fine. The court, after a hearing,  
337 shall make a determination as to whether the noncriminal  
338 violation was committed. If the court finds the violation was  
339 committed, it shall impose an appropriate penalty as specified  
340 in subsection (1) or subsection (2). A person who participates  
341 in community service shall be considered an employee of the  
342 state for the purpose of chapter 440, for the duration of such  
343 service.

344 (5) (a) If a person under the minimum age for purchase 18  
345 ~~years of age~~ is found by the court to have committed a  
346 noncriminal violation under this section and that person has  
347 failed to complete community service, pay the fine as required  
348 by paragraph (1) (a) or paragraph (2) (a), or attend a school-  
349 approved anti-tobacco program, if locally available, the court  
350 must direct the Department of Highway Safety and Motor Vehicles  
351 to withhold issuance of or suspend the driver license or driving  
352 privilege of that person for a period of 30 consecutive days.

353 (b) If a person under the minimum age for purchase 18 years  
354 ~~of age~~ is found by the court to have committed a noncriminal  
355 violation under this section and that person has failed to pay  
356 the applicable fine as required by paragraph (1) (b) or paragraph  
357 (2) (b), the court must direct the Department of Highway Safety  
358 and Motor Vehicles to withhold issuance of or suspend the driver  
359 license or driving privilege of that person for a period of 45



123848

360 consecutive days.

361 (6) Eighty percent of all civil penalties received by a  
362 county court pursuant to this section shall be remitted by the  
363 clerk of the court to the Department of Revenue for transfer to  
364 the Department of Education to provide for teacher training and  
365 for research and evaluation to reduce and prevent the use of  
366 tobacco products by children. The remaining 20 percent of civil  
367 penalties received by a county court pursuant to this section  
368 shall remain with the clerk of the county court to cover  
369 administrative costs.

370 Section 11. Paragraph (b) of subsection (2) and subsection  
371 (3) of section 569.12, Florida Statutes, are amended to read:

372 569.12 Jurisdiction; tobacco product enforcement officers  
373 or agents; enforcement.—

374 (2)

375 (b) A tobacco product enforcement officer is authorized to  
376 issue a citation to a person under the minimum age for purchase  
377 ~~of 18~~ when, based upon personal investigation, the officer has  
378 reasonable cause to believe that the person has committed a  
379 civil infraction in violation of s. 386.212 or s. 569.11.

380 (3) A correctional probation officer as defined in s.  
381 943.10(3) is authorized to issue a citation to a person under  
382 the minimum age for purchase ~~of 18~~ when, based upon personal  
383 investigation, the officer has reasonable cause to believe that  
384 the person has committed a civil infraction in violation of s.  
385 569.11.

386 Section 12. Section 569.14, Florida Statutes, is amended to  
387 read:

388 569.14 Posting of a sign stating that the sale of tobacco



123848

389 products to persons under the minimum age for purchase ~~18 years~~  
390 ~~of age~~ is unlawful; enforcement; penalty.-

391 (1) A dealer that sells tobacco products shall post a clear  
392 and conspicuous sign in each place of business where such  
393 products are sold which substantially states the following:

394  
395 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE  
396 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS  
397 REQUIRED FOR PURCHASE.

398  
399 (2) A dealer that sells tobacco products and nicotine  
400 products or nicotine dispensing devices, as defined in s.  
401 877.112, may use a sign that substantially states the following:

402  
403 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR  
404 NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE  
405 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS  
406 REQUIRED FOR PURCHASE.

407  
408 A dealer that uses a sign as described in this subsection meets  
409 the signage requirements of subsection (1) and s. 877.112.

410 (3) The division shall make available to dealers of tobacco  
411 products signs that meet the requirements of subsection (1) or  
412 subsection (2).

413 (4) Any dealer that sells tobacco products shall provide at  
414 the checkout counter in a location clearly visible to the dealer  
415 or the dealer's agent or employee instructional material in a  
416 calendar format or similar format to assist in determining  
417 whether a person is of legal age to purchase tobacco products.



123848

418 This point of sale material must contain substantially the  
419 following language:

420

421 IF YOU WERE NOT BORN BEFORE THIS DATE

422 (insert date and applicable year)

423 YOU CANNOT BE SOLD ~~BUY~~ TOBACCO PRODUCTS.

424

425 Upon approval by the division, in lieu of a calendar a dealer  
426 may use card readers, scanners, or other electronic or automated  
427 systems that can verify whether a person is of legal age to  
428 purchase tobacco products. Failure to comply with the provisions  
429 contained in this subsection shall result in imposition of  
430 administrative penalties as provided in s. 569.006.

431 (5) The division, through its agents and inspectors, shall  
432 enforce this section.

433 (6) Any person who fails to comply with subsection (1) is  
434 guilty of a misdemeanor of the second degree, punishable as  
435 provided in s. 775.082 or s. 775.083.

436 Section 13. Subsections (3) and (4) of section 569.19,  
437 Florida Statutes, are amended to read:

438 569.19 Annual report.—The division shall report annually  
439 with written findings to the Legislature and the Governor by  
440 December 31, on the progress of implementing the enforcement  
441 provisions of this chapter. This must include, but is not  
442 limited to:

443 (3) The number of violations for selling tobacco products  
444 to persons under the minimum age for purchase ~~18~~, and the  
445 results of administrative hearings on the above and related  
446 issues.





123848

447 (4) The number of persons under the minimum age for  
448 purchase ~~is~~ cited for violations of s. 569.11 and sanctions  
449 imposed as a result of citation.

450 Section 14. Section 877.112, Florida Statutes, is amended  
451 to read:

452 877.112 Nicotine products and nicotine dispensing devices;  
453 prohibitions for persons under 21 years of age ~~minors~~;  
454 penalties; civil fines; signage requirements; preemption.—

455 (1) DEFINITIONS.—As used in this section, the term:

456 (a) "Any person under 21 years of age" does not include any  
457 person under the age of 21 who:

458 1. Is in the military reserve or on active duty in the  
459 Armed Forces of the United States; or

460 2. Is acting in his or her scope of lawful employment with  
461 an entity that sells, manufactures, or distributes nicotine  
462 products or nicotine dispensing devices.

463 (b) ~~(a)~~ "Nicotine dispensing device" means any product that  
464 employs an electronic, chemical, or mechanical means to produce  
465 vapor from a nicotine product, including, but not limited to, an  
466 electronic cigarette, electronic cigar, electronic cigarillo,  
467 electronic pipe, or other similar device or product, any  
468 replacement cartridge for such device, and any other container  
469 of nicotine in a solution or other form intended to be used with  
470 or within an electronic cigarette, electronic cigar, electronic  
471 cigarillo, electronic pipe, or other similar device or product.

472 (c) ~~(b)~~ "Nicotine product" means any product that contains  
473 nicotine, including liquid nicotine, that is intended for human  
474 consumption, whether inhaled, chewed, absorbed, dissolved, or  
475 ingested by any means, but does not include a:



123848

476           1. Tobacco product, as defined in s. 569.002;  
477           2. Product regulated as a drug or device by the United  
478 States Food and Drug Administration under Chapter V of the  
479 federal Food, Drug, and Cosmetic Act; or  
480           3. Product that contains incidental nicotine.  
481           (d)~~(e)~~ "Self-service merchandising" means the open display  
482 of nicotine products or nicotine dispensing devices, whether  
483 packaged or otherwise, for direct retail customer access and  
484 handling before purchase without the intervention or assistance  
485 of the retailer or the retailer's owner, employee, or agent. An  
486 open display of such products and devices includes the use of an  
487 open display unit.  
488           (2) PROHIBITIONS ON SALE TO PERSONS UNDER 21 YEARS OF AGE  
489 ~~MINORS~~.—It is unlawful to sell, deliver, barter, furnish, or  
490 give, directly or indirectly, to any person who is under 21 ~~18~~  
491 years of age, any nicotine product or a nicotine dispensing  
492 device.  
493           (3) PROHIBITIONS ON GIFTING SAMPLES TO PERSONS UNDER 21  
494 YEARS OF AGE ~~MINORS~~.—The gift of a sample nicotine product or  
495 nicotine dispensing device to any person under the age of 21 ~~18~~  
496 by a retailer of nicotine products or nicotine dispensing  
497 devices, or by an employee of such retailer, is prohibited.  
498           (4) PENALTIES.—Any person who violates subsection (2) or  
499 subsection (3) commits a misdemeanor of the second degree,  
500 punishable as provided in s. 775.082 or s. 775.083. However, any  
501 person who violates subsection (2) or subsection (3) for a  
502 second or subsequent time within 1 year of the first violation  
503 commits a misdemeanor of the first degree, punishable as  
504 provided in s. 775.082 or s. 775.083.



123848

505 (5) AFFIRMATIVE DEFENSES.—A person charged with a violation  
506 of subsection (2) or subsection (3) has a complete defense if,  
507 at the time the nicotine product or nicotine dispensing device  
508 was sold, delivered, bartered, furnished, or given:

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

511 (b) The appearance of the buyer or recipient was such that  
512 a prudent person would believe the buyer or recipient to be 21  
513 ~~18~~ years of age or older; and

514 (c) Such person carefully checked a driver license or an  
515 identification card issued by this state or another state of the  
516 United States, a passport, or a United States Armed Services  
517 identification card presented by the buyer or recipient and  
518 acted in good faith and in reliance upon the representation and  
519 appearance of the buyer or recipient in the belief that the  
520 buyer or recipient was 21 ~~18~~ years of age or older.

521 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR  
522 NICOTINE DISPENSING DEVICES BY PERSONS UNDER 21 YEARS OF AGE  
523 ~~MINORS~~.—It is unlawful for any person under 21 ~~18~~ years of age  
524 to knowingly possess any nicotine product or a nicotine  
525 dispensing device. Any person under 21 ~~18~~ years of age who  
526 violates this subsection commits a noncriminal violation as  
527 defined in s. 775.08(3), punishable by:

528 (a) For a first violation, 16 hours of community service  
529 or, instead of community service, a \$25 fine. In addition, the  
530 person must attend a school-approved anti-tobacco and nicotine  
531 program, if locally available;

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



123848

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

539  
540 Any second or subsequent violation not within the 12-week time  
541 period after the first violation is punishable as provided for a  
542 first violation.

543 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for  
544 any person under 21 ~~18~~ years of age to misrepresent his or her  
545 age or military service for the purpose of inducing a retailer  
546 of nicotine products or nicotine dispensing devices or an agent  
547 or employee of such retailer to sell, give, barter, furnish, or  
548 deliver any nicotine product or nicotine dispensing device, or  
549 to purchase, or attempt to purchase, any nicotine product or  
550 nicotine dispensing device from a person or a vending machine.  
551 Any person under 21 ~~18~~ years of age who violates this subsection  
552 commits a noncriminal violation as defined in s. 775.08(3),  
553 punishable by:

554 (a) For a first violation, 16 hours of community service  
555 or, instead of community service, a \$25 fine and, in addition,  
556 the person must attend a school-approved anti-tobacco and  
557 nicotine program, if available;

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

560 (c) For a third or subsequent violation within 12 weeks of  
561 the first violation, the court must direct the Department of  
562 Highway Safety and Motor Vehicles to withhold issuance of or



123848

563 suspend or revoke the person's driver license or driving  
564 privilege, as provided in s. 322.056.

565  
566 Any second or subsequent violation not within the 12-week time  
567 period after the first violation is punishable as provided for a  
568 first violation.

569 (8) PENALTIES FOR PERSONS UNDER 21 YEARS OF AGE ~~MINORS~~.—

570 (a) A person under 21 ~~18~~ years of age cited for committing  
571 a noncriminal violation under this section must sign and accept  
572 a civil citation indicating a promise to appear before the  
573 county court or comply with the requirement for paying the fine  
574 and must attend a school-approved anti-tobacco and nicotine  
575 program, if locally available. If a fine is assessed for a  
576 violation of this section, the fine must be paid within 30 days  
577 after the date of the citation or, if a court appearance is  
578 mandatory, within 30 days after the date of the hearing.

579 (b) A person charged with a noncriminal violation under  
580 this section must appear before the county court or comply with  
581 the requirement for paying the fine. The court, after a hearing,  
582 shall make a determination as to whether the noncriminal  
583 violation was committed. If the court finds the violation was  
584 committed, it shall impose an appropriate penalty as specified  
585 in subsection (6) or subsection (7). A person who participates  
586 in community service shall be considered an employee of the  
587 state for the purpose of chapter 440, for the duration of such  
588 service.

589 (c) If a person under 21 ~~18~~ years of age is found by the  
590 court to have committed a noncriminal violation under this  
591 section and that person has failed to complete community



123848

592 service, pay the fine as required by paragraph (6) (a) or  
593 paragraph (7) (a), or attend a school-approved anti-tobacco and  
594 nicotine program, if locally available, the court must direct  
595 the Department of Highway Safety and Motor Vehicles to withhold  
596 issuance of or suspend the driver license or driving privilege  
597 of that person for 30 consecutive days.

598 (d) If a person under 21 ~~18~~ years of age is found by the  
599 court to have committed a noncriminal violation under this  
600 section and that person has failed to pay the applicable fine as  
601 required by paragraph (6) (b) or paragraph (7) (b), the court must  
602 direct the Department of Highway Safety and Motor Vehicles to  
603 withhold issuance of or suspend the driver license or driving  
604 privilege of that person for 45 consecutive days.

605 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all  
606 civil penalties received by a county court pursuant to  
607 subsections (6) and (7) shall be remitted by the clerk of the  
608 court to the Department of Revenue for transfer to the  
609 Department of Education to provide for teacher training and for  
610 research and evaluation to reduce and prevent the use of tobacco  
611 products, nicotine products, or nicotine dispensing devices by  
612 children. The remaining 20 percent of civil penalties received  
613 by a county court pursuant to this section shall remain with the  
614 clerk of the county court to cover administrative costs.

615 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE  
616 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

617 (a) Any retailer that sells nicotine products or nicotine  
618 dispensing devices shall post a clear and conspicuous sign in  
619 each place of business where such products are sold which  
620 substantially states the following:



123848

621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(b) A retailer that sells nicotine products or nicotine dispensing devices shall provide at the checkout counter in a location clearly visible to the retailer or the retailer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase nicotine products or nicotine dispensing devices. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE  
(insert date and applicable year)  
YOU CANNOT BUY NICOTINE PRODUCTS OR  
NICOTINE DISPENSING DEVICES.

In lieu of a calendar a retailer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase nicotine products or nicotine dispensing devices.

(11) SELF-SERVICE MERCHANDISING PROHIBITED.—

(a) A retailer that sells nicotine products or nicotine dispensing devices may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.

(b) A retailer that sells nicotine products or nicotine



123848

650 dispensing devices may not place such products or devices in an  
651 open display unit unless the unit is located in an area that is  
652 inaccessible to customers.

653 (c) Paragraphs (a) and (b) do not apply to an establishment  
654 that prohibits persons under 21 ~~18~~ years of age on the premises.

655 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS  
656 OR NICOTINE DISPENSING DEVICES.—

657 (a) In order to prevent persons under 21 ~~18~~ years of age  
658 from purchasing or receiving nicotine products or nicotine  
659 dispensing devices, the sale or delivery of such products or  
660 devices is prohibited, except:

661 1. When under the direct control, or line of sight where  
662 effective control may be reasonably maintained, of the retailer  
663 of nicotine products or nicotine dispensing devices or such  
664 retailer's agent or employee; or

665 2. Sales from a vending machine are prohibited under  
666 subparagraph 1. and are only permissible from a machine that is  
667 equipped with an operational lockout device which is under the  
668 control of the retailer of nicotine products or nicotine  
669 dispensing devices or such retailer's agent or employee who  
670 directly regulates the sale of items through the machine by  
671 triggering the lockout device to allow the dispensing of one  
672 nicotine product or nicotine dispensing device. The lockout  
673 device must include a mechanism to prevent the machine from  
674 functioning, if the power source for the lockout device fails or  
675 if the lockout device is disabled, and a mechanism to ensure  
676 that only one nicotine product or nicotine dispensing device is  
677 dispensed at a time.

678 (b) Paragraph (a) does not apply to an establishment that





679 prohibits persons under 21 ~~18~~ years of age on the premises.

680 (c) A retailer of nicotine products or nicotine dispensing  
681 devices or such retailer's agent or employee may require proof  
682 of age of a purchaser of such products or devices before selling  
683 the product or device to that person.

684  
685 ===== T I T L E A M E N D M E N T =====

686 And the title is amended as follows:

687 Delete lines 2 - 53

688 and insert:

689 An act relating to tobacco and nicotine products;  
690 providing a short title; creating s. 163.085, F.S.;  
691 defining terms; preempting the establishment of the  
692 minimum age for the sale or delivery of tobacco  
693 products, nicotine products, or nicotine dispensing  
694 devices to the state; providing exceptions; amending  
695 s. 210.095, F.S.; deleting the definition of the term  
696 "adult"; defining the term "the minimum age for  
697 purchase"; conforming provisions to changes made by  
698 the act; amending s. 386.212, F.S.; revising the age  
699 under which it is unlawful to smoke in, on, or near  
700 school property; amending s. 569.002, F.S.; defining  
701 the terms "the minimum age for purchase" and "any  
702 person under the minimum age for purchase"; replacing  
703 the term "any person under the age of 18" with "any  
704 person under the minimum age for purchase"; amending  
705 s. 569.007, F.S.; providing that it is unlawful to  
706 sell or deliver tobacco products to persons under the  
707 minimum age for purchase; providing an exception;



123848

708 amending s. 569.0075, F.S.; revising the age under  
709 which the gift of tobacco products to a person by  
710 certain entities is prohibited; amending s. 569.008,  
711 F.S.; revising legislative intent to reflect that the  
712 Legislature intends to prevent the sale of tobacco  
713 products to persons under a specified age; conforming  
714 provisions to changes made by the act; amending s.  
715 569.101, F.S.; revising the age limitation that  
716 applies to the sale, delivery, bartering, furnishing,  
717 or giving of tobacco products; conforming provisions  
718 to changes made by the act; amending s. 569.11, F.S.;  
719 revising the age limitation that applies to possessing  
720 tobacco products; revising the age limitation that  
721 applies to unlawful misrepresentation of age or  
722 military service for certain purposes; conforming  
723 provisions to changes made by the act; amending ss.  
724 569.12, 569.14, and 569.19, F.S.; conforming  
725 provisions to changes made by the act; amending s.  
726 877.112, F.S.; defining the term "any person under 21  
727 years of age"; revising the age limitations relating  
728 to nicotine products and nicotine dispensing devices;  
729 conforming provisions to changes made by the act;  
730 providing an