

1 A bill to be entitled
2 An act relating to the use of regulated substances;
3 amending s. 210.095, F.S.; deleting the definition of
4 the term "adult"; conforming provisions to changes
5 made by the act; amending s. 381.986, F.S.; providing
6 that it is unlawful for a qualified physician to issue
7 a physician certification for marijuana in a form for
8 smoking to a patient under 21 years of age; requiring
9 the standardized informed consent form to include
10 certain information concerning negative health effects
11 of smoking marijuana on persons under 21 years of age;
12 creating s. 386.2115, F.S.; prohibiting the sale of
13 certain flavored liquid nicotine products; providing
14 an exception; providing penalties; amending s.
15 386.212, F.S.; providing that it is unlawful for
16 persons under 21 years of age to smoke tobacco or vape
17 in, on, or within 1,000 feet of the real property
18 comprising a public or private elementary, middle, or
19 secondary school during specified hours; amending s.
20 569.002, F.S.; revising definitions; amending s.
21 569.007, F.S.; providing that it is unlawful to sell
22 or deliver tobacco products to persons under the age
23 of 21; providing an exception; amending s. 569.0075,
24 F.S.; prohibiting certain entities from gifting sample
25 tobacco products to persons under the age of 21;

26 | amending s. 569.008, F.S.; conforming provisions to
27 | changes made by the act; amending s. 569.101, F.S.;
28 | providing that it is unlawful to sell, deliver,
29 | barter, furnish, or give tobacco products to persons
30 | under the age of 21; conforming provisions to changes
31 | made by the act; amending s. 569.11, F.S.; prohibiting
32 | persons under the age of 21 from possessing tobacco
33 | products; providing that it is unlawful for persons
34 | under the age of 21 to misrepresent their age or
35 | military service to acquire tobacco products;
36 | conforming provisions to changes made by the act;
37 | amending ss. 569.12, 569.14, and 569.19, F.S.;
38 | conforming provisions to changes made by the act;
39 | amending s. 877.112, F.S.; providing and revising
40 | definitions; prohibiting the sale and possession of
41 | nicotine products or nicotine dispensing devices by
42 | persons under the age of 21; providing an effective
43 | date.

44 |
45 | Be It Enacted by the Legislature of the State of Florida:
46 |

47 | Section 1. Paragraphs (b) through (j) of subsection (1) of
48 | section 210.095, Florida Statutes, are redesignated as
49 | paragraphs (a) through (i), respectively, and paragraph (a) of
50 | subsection (1), paragraph (c) of subsection (2), paragraph (a)

51 of subsection (3), paragraph (a) of subsection (4), subsection
52 (5), and paragraphs (a), (b), (e), and (g) of subsection (8) of
53 that section are amended, to read:

54 210.095 Mail order, Internet, and remote sales of tobacco
55 products; age verification.—

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

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

59 (2)

60 (c) A person may not make a delivery sale of tobacco
61 products to any individual who is not 21 years of age or older
62 ~~an adult.~~

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

67 (a) Obtains from the individual submitting the order a
68 certification that includes:

69 1. Reliable confirmation that the individual is 21 years
70 of age or older ~~an adult~~; and

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

73 a. Certifies the address and date of birth of the
74 individual; and

75 b. Confirms that the individual wants to receive delivery

76 sales from a tobacco company and understands that, under the
 77 laws of this state, the following actions are illegal:

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

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

82 (III) Purchasing tobacco products, if the person making
 83 the purchase is under the legal minimum purchase age.

84

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

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

91 (a) Illegal if made to individuals who are not 21 years of
 92 age or older ~~adults~~.

93

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

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

99 (a) Include as part of the shipping documents, in a clear
 100 and conspicuous manner, the following statement: "Tobacco

101 Products: Florida law prohibits shipping to individuals under 21
102 ~~18~~ years of age and requires the payment of all applicable
103 taxes."

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

106 1. The individual submitting the order for the delivery
107 sale or another individual who is 21 years of age or older ~~adult~~
108 who resides at the individual's address to sign his or her name
109 to accept delivery of the shipping container. Proof of the legal
110 minimum purchase age of the individual accepting delivery is
111 required only if the individual appears to be under 27 years of
112 age.

113 2. Proof that the individual is either the addressee or
114 the individual who is 21 years of age or older ~~adult~~ designated
115 by the addressee, in the form of a valid, government-issued
116 identification card bearing a photograph of the individual who
117 signs to accept delivery of the shipping container.

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

120
121 If the person accepting a purchase order for a delivery sale
122 delivers the tobacco products without using a delivery service,
123 the person must comply with all of the requirements of this
124 section which apply to a delivery service. Any failure to comply
125 with a requirement of this section constitutes a violation

126 | thereof.

127 | (8) (a) Except as otherwise provided in this section, a
 128 | violation of this section by a person other than an individual
 129 | who is not 21 years of age or older ~~an adult~~ is a misdemeanor of
 130 | the first degree, punishable as provided in s. 775.082 or s.
 131 | 775.083, and:

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

135 | 2. For a second or subsequent violation of this section,
 136 | the person shall be fined \$5,000 or five times the retail value
 137 | of the tobacco products involved in the violation, whichever is
 138 | greater.

139 | (b) A person who is 21 years of age or older ~~an adult~~ and
 140 | knowingly submits a false certification under subsection (3)
 141 | commits a misdemeanor of the first degree, punishable as
 142 | provided in s. 775.082 or s. 775.083. For each offense, the
 143 | person shall be fined \$10,000 or five times the retail value of
 144 | the tobacco products involved in the violation, whichever is
 145 | greater.

146 | (e) A person who, in connection with a delivery sale,
 147 | delivers tobacco products on behalf of a delivery service to an
 148 | individual who is not 21 years of age or older ~~an adult~~ commits
 149 | a misdemeanor of the first ~~third~~ degree, punishable as provided
 150 | in s. 775.082 or s. 775.083.

151 (g) An individual who is not 21 years of age or older ~~an~~
152 ~~adult~~ and who knowingly violates any provision of this section
153 commits a misdemeanor of the first ~~third~~ degree, punishable as
154 provided in s. 775.082 or s. 775.083.

155 Section 2. Paragraph (d) of subsection (4) of section
156 381.986, Florida Statutes, is amended to read:

157 381.986 Medical use of marijuana.—

158 (4) PHYSICIAN CERTIFICATION.—

159 (d) A qualified physician may not issue a physician
160 certification for marijuana in a form for smoking to a patient
161 under 21 ~~18~~ years of age unless the patient is diagnosed with a
162 terminal condition, the qualified physician determines that
163 smoking is the most effective route of administration for the
164 patient, and a second physician who is a board-certified
165 pediatrician concurs with such determination. Such determination
166 and concurrence must be documented in the patient's medical
167 record and in the medical marijuana use registry. The certifying
168 physician must obtain the written informed consent of such
169 patient's parent or legal guardian before issuing a physician
170 certification to the patient for marijuana in a form for smoking
171 for patients under 18 years of age. The qualified physician must
172 use a standardized informed consent form adopted in rule by the
173 Board of Medicine and the Board of Osteopathic Medicine which
174 must include information concerning the negative health effects
175 of smoking marijuana on persons under 21 ~~18~~ years of age and an

176 acknowledgment that the qualified physician has sufficiently
177 explained the contents of the form.

178 Section 3. Section 386.2115, Florida Statutes, is created
179 to read:

180 386.2115 Prohibition on the sale of certain flavored
181 liquid nicotine products; exception; penalties.-

182 (1) The sale of flavored liquid nicotine products intended
183 for use in vapor-generating electronic devices is prohibited;
184 however, the sale of tobacco-flavored liquid nicotine products
185 intended for such use is not prohibited by this section.

186 (2) Any person who violates this section commits a
187 noncriminal violation as defined in s. 775.08(3), punishable by
188 a fine of not more than \$100 for the first violation and not
189 more than \$500 for each subsequent violation, as determined by
190 department rule.

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

193 386.212 Smoking and vaping prohibited near school
194 property; penalty.-

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

201 Section 5. Subsections (6) and (7) of section 569.002,
202 Florida Statutes, are amended to read:

203 569.002 Definitions.—As used in this chapter, the term:

204 (6) "Tobacco products" means ~~includes~~ loose tobacco
205 leaves, and products made from tobacco leaves, in whole or in
206 part; ~~and~~ cigarette wrappers, which can be used for smoking,
207 sniffing, or chewing; and nicotine dispensing devices and
208 nicotine products, as defined in s. 877.112(b) and (c).

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

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

213 ~~(b) Is in the military reserve or on active duty in the~~
214 ~~Armed Forces of the United States;~~

215 ~~(c) Is otherwise emancipated by a court of competent~~
216 ~~jurisdiction and released from parental care and responsibility;~~
217 ~~or~~

218 ~~(d) is acting in his or her scope of lawful employment~~
219 ~~with an entity licensed under the provisions of chapter 210 or~~
220 ~~this chapter.~~

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

223 569.007 Sale or delivery of tobacco products;
224 restrictions.—

225 (1) In order to prevent persons under the age of 21 ~~18~~

226 ~~years of age~~ from purchasing or receiving tobacco products, the
227 sale or delivery of tobacco products is prohibited, except:

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

230 (b) Sales from a vending machine are prohibited under ~~the~~
231 ~~provisions of~~ paragraph (1) (a) and are only permissible from a
232 machine that is equipped with an operational lockout device
233 which is under the control of the dealer or the dealer's agent
234 or employee who directly regulates the sale of items through the
235 machine by triggering the lockout device to allow the dispensing
236 of one tobacco product. The lockout device must include a
237 mechanism to prevent the machine from functioning if the power
238 source for the lockout device fails or if the lockout device is
239 disabled, and a mechanism to ensure that only one tobacco
240 product is dispensed at a time.

241 (2) ~~The provisions of~~ Subsection (1) does ~~shall~~ not apply
242 to an establishment that prohibits persons under the age of 21
243 ~~18 years of age~~ on the licensed premises.

244 Section 7. Section 569.0075, Florida Statutes, is amended
245 to read:

246 569.0075 Gift of sample tobacco products prohibited.—The
247 gift of sample tobacco products to any person under the age of
248 21 ~~18~~ by an entity licensed or permitted under ~~the provisions of~~
249 chapter 210 or this chapter, or by an employee of such entity,
250 is prohibited and is punishable as provided in s. 569.101.

251 Section 8. Subsections (1), (2), and (3) of section
252 569.008, Florida Statutes, are amended to read:

253 569.008 Responsible retail tobacco products dealers;
254 qualifications; mitigation of disciplinary penalties; diligent
255 management and supervision; presumption.—

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

260 (2) To qualify as a responsible retail tobacco products
261 dealer, the dealer must establish and implement procedures
262 designed to ensure that the dealer's employees comply with ~~the~~
263 ~~provisions of~~ this chapter. The dealer must provide a training
264 program for the dealer's employees which addresses the use and
265 sale of tobacco products and which includes at least the
266 following topics:

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

268 (b) Methods of recognizing and handling customers under
269 the age of 21 ~~18 years of age~~.

270 (c) Procedures for proper examination of identification
271 cards in order to verify that customers are not under the age of
272 21 ~~18 years of age~~.

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

275 (3) In determining penalties under s. 569.006, the

276 | division may mitigate penalties imposed against a dealer because
277 | of an employee's illegal sale of a tobacco product to a person
278 | under the age of 21 ~~18 years of age~~ if the following conditions
279 | are met:

280 | (a) The dealer is qualified as a responsible dealer under
281 | this section.

282 | (b) The dealer provided the training program required
283 | under subsection (2) to that employee before the illegal sale
284 | occurred.

285 | (c) The dealer had no knowledge of that employee's
286 | violation at the time of the violation and did not direct,
287 | approve, or participate in the violation.

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

290 | Section 9. Subsections (1) and (3) of section 569.101,
291 | Florida Statutes, are amended to read:

292 | 569.101 Selling, delivering, bartering, furnishing, or
293 | giving tobacco products to persons under the age of 21 ~~18 years~~
294 | ~~of age~~; criminal penalties; defense.—

295 | (1) It is unlawful to sell, deliver, barter, furnish, or
296 | give, directly or indirectly, to any person who is under the age
297 | of 21 ~~18 years of age~~, any tobacco product.

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

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

303 (b) The appearance of the buyer or recipient was such that
 304 a prudent person would believe the buyer or recipient to be 21
 305 ~~18~~ years of age or older; and

306 (c) Such person carefully checked a driver license or an
 307 identification card issued by this state or another state of the
 308 United States, a passport, or a United States armed services
 309 identification card presented by the buyer or recipient and
 310 acted in good faith and in reliance upon the representation and
 311 appearance of the buyer or recipient in the belief that the
 312 buyer or recipient was 21 ~~18~~ years of age or older.

313 Section 10. Section 569.11, Florida Statutes, is amended
 314 to read:

315 569.11 Possession, misrepresenting age or military service
 316 to purchase, and purchase of tobacco products by persons under
 317 the age of 21 ~~18 years of age~~ prohibited; penalties;
 318 jurisdiction; disposition of fines.—

319 (1) It is unlawful for any person under the age of 21 ~~18~~
 320 ~~years of age~~ to knowingly possess any tobacco product. Any
 321 person under the age of 21 ~~18 years of age~~ who violates this
 322 subsection commits a noncriminal violation as provided in s.
 323 775.08(3), punishable by:

324 (a) For a first violation, 16 hours of community service
 325 or, instead of community service, a \$25 fine. In addition, the

326 | person must attend a school-approved anti-tobacco program, if
 327 | locally available; or

328 | (b) For a second or subsequent violation within 12 weeks
 329 | after the first violation, a \$25 fine.

330 |

331 | Any second or subsequent violation not within the 12-week period
 332 | after the first violation is punishable as provided for a first
 333 | violation.

334 | (2) It is unlawful for any person under the age of 21 ~~18~~
 335 | ~~years of age~~ to misrepresent his or her age or military service
 336 | for the purpose of inducing a dealer or an agent or employee of
 337 | the dealer to sell, give, barter, furnish, or deliver any
 338 | tobacco product, or to purchase, or attempt to purchase, any
 339 | tobacco product from a person or a vending machine. Any person
 340 | under the age of 21 ~~18 years of age~~ who violates this subsection
 341 | commits a noncriminal violation as provided in s. 775.08(3),
 342 | punishable by:

343 | (a) For a first violation, 16 hours of community service
 344 | or, instead of community service, a \$25 fine and, in addition,
 345 | the person must attend a school-approved anti-tobacco program,
 346 | if available; or

347 | (b) For a second or subsequent violation within 12 weeks
 348 | after the first violation, a \$25 fine.

349 |

350 | Any second or subsequent violation not within the 12-week period

351 after the first violation is punishable as provided for a first
352 violation.

353 (3) Any person under the age of 21 ~~18 years of age~~ cited
354 for committing a noncriminal violation under this section must
355 sign and accept a civil citation indicating a promise to appear
356 before the county court or comply with the requirement for
357 paying the fine and must attend a school-approved anti-tobacco
358 program, if locally available. If a fine is assessed for a
359 violation of this section, the fine must be paid within 30 days
360 after the date of the citation or, if a court appearance is
361 mandatory, within 30 days after the date of the hearing.

362 (4) A person charged with a noncriminal violation under
363 this section must appear before the county court or comply with
364 the requirement for paying the fine. The court, after a hearing,
365 shall make a determination as to whether the noncriminal
366 violation was committed. If the court finds the violation was
367 committed, it shall impose an appropriate penalty as specified
368 in subsection (1) or subsection (2). A person who participates
369 in community service shall be considered an employee of the
370 state for the purpose of chapter 440, for the duration of such
371 service.

372 (5) (a) If a person under the age of 21 ~~18 years of age~~ is
373 found by the court to have committed a noncriminal violation
374 under this section and that person has failed to complete
375 community service, pay the fine as required by paragraph (1) (a)

376 or paragraph (2) (a), or attend a school-approved anti-tobacco
377 program, if locally available, the court may direct the
378 Department of Highway Safety and Motor Vehicles to withhold
379 issuance of or suspend the driver license or driving privilege
380 of that person for a period of 30 consecutive days.

381 (b) If a person under the age of 21 ~~18 years of age~~ is
382 found by the court to have committed a noncriminal violation
383 under this section and that person has failed to pay the
384 applicable fine as required by paragraph (1) (b) or paragraph
385 (2) (b), the court may direct the Department of Highway Safety
386 and Motor Vehicles to withhold issuance of or suspend the driver
387 license or driving privilege of that person for a period of 45
388 consecutive days.

389 (6) Eighty percent of all civil penalties received by a
390 county court pursuant to this section shall be remitted by the
391 clerk of the court to the Department of Revenue for transfer to
392 the Department of Education to provide for teacher training and
393 for research and evaluation to reduce and prevent the use of
394 tobacco products by children. The remaining 20 percent of civil
395 penalties received by a county court pursuant to this section
396 shall remain with the clerk of the county court to cover
397 administrative costs.

398 Section 11. Paragraph (b) of subsection (2) and subsection
399 (3) of section 569.12, Florida Statutes, are amended to read:
400 569.12 Jurisdiction; tobacco product enforcement officers

401 or agents; enforcement.—

402 (2)

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

408 (3) A correctional probation officer as defined in s.
409 943.10(3) is authorized to issue a citation to a person under
410 the age of 21 ~~18~~ when, based upon personal investigation, the
411 officer has reasonable cause to believe that the person has
412 committed a civil infraction in violation of s. 569.11.

413 Section 12. Subsections (1) and (2) of section 569.14,
414 Florida Statutes, are amended to read:

415 569.14 Posting of a sign stating that the sale of tobacco
416 products to persons under the age of 21 ~~18 years of age~~ is
417 unlawful; enforcement; penalty.—

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

421
422 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~
423 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

424
425 (2) A dealer that sells tobacco products and nicotine

426 products or nicotine dispensing devices, as defined in s.
 427 877.112, may use a sign that substantially states the following:

428
 429 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
 430 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST
 431 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

432
 433 A dealer that uses a sign as described in this subsection meets
 434 the signage requirements of subsection (1) and s. 877.112.

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

437 569.19 Annual report.—The division shall report annually
 438 with written findings to the Legislature and the Governor by
 439 December 31, on the progress of implementing the enforcement
 440 provisions of this chapter. This must include, but is not
 441 limited to:

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

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

448 Section 14. Section 877.112, Florida Statutes, is amended
 449 to read:

450 877.112 Nicotine products and nicotine dispensing devices;

451 prohibitions for persons under the age of 21 ~~minors~~; penalties;
 452 civil fines; signage requirements; preemption.—

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

454 (a) "Any person under the age of 21" does not include any
 455 person under the age of 21 who is acting in his or her scope of
 456 lawful employment with an entity that sells, manufactures, or
 457 distributes nicotine products or nicotine dispensing devices.

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

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

471 ~~1. Tobacco product, as defined in s. 569.002;~~

472 ~~1.2.~~ Product regulated as a drug or device by the United
 473 States Food and Drug Administration under Chapter V of the
 474 federal Food, Drug, and Cosmetic Act; or

475 ~~2.3.~~ Product that contains incidental nicotine.

476 (d) ~~(e)~~ "Self-service merchandising" means the open display
477 of nicotine products or nicotine dispensing devices, whether
478 packaged or otherwise, for direct retail customer access and
479 handling before purchase without the intervention or assistance
480 of the retailer or the retailer's owner, employee, or agent. An
481 open display of such products and devices includes the use of an
482 open display unit.

483 (2) PROHIBITIONS ON SALE TO PERSONS UNDER THE AGE OF 21
484 ~~MINORS~~.—It is unlawful to sell, deliver, barter, furnish, or
485 give, directly or indirectly, to any person who is under 21 ~~18~~
486 years of age, any nicotine product or a nicotine dispensing
487 device.

488 (3) PROHIBITIONS ON GIFTING SAMPLES TO PERSONS UNDER THE
489 AGE OF 21 ~~MINORS~~.—The gift of a sample nicotine product or
490 nicotine dispensing device to any person under the age of 21 ~~18~~
491 by a retailer of nicotine products or nicotine dispensing
492 devices, or by an employee of such retailer, is prohibited.

493 (4) PENALTIES.—Any person who violates subsection (2) or
494 subsection (3) commits a misdemeanor of the second degree,
495 punishable as provided in s. 775.082 or s. 775.083. However, any
496 person who violates subsection (2) or subsection (3) for a
497 second or subsequent time within 1 year of the first violation
498 commits a misdemeanor of the first degree, punishable as
499 provided in s. 775.082 or s. 775.083.

500 (5) AFFIRMATIVE DEFENSES.—A person charged with a

501 violation of subsection (2) or subsection (3) has a complete
502 defense if, at the time the nicotine product or nicotine
503 dispensing device was sold, delivered, bartered, furnished, or
504 given:

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

507 (b) The appearance of the buyer or recipient was such that
508 a prudent person would believe the buyer or recipient to be 21
509 ~~18~~ years of age or older; and

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

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

524 (a) For a first violation, 16 hours of community service
525 or, instead of community service, a \$25 fine. In addition, the

526 person must attend a school-approved anti-tobacco and nicotine
527 program, if locally available; or

528 (b) For a second or subsequent violation within 12 weeks
529 after the first violation, a \$25 fine.

530

531 Any second or subsequent violation not within the 12-week time
532 period after the first violation is punishable as provided for a
533 first violation.

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

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

549 (b) For a second violation within 12 weeks after the first
550 violation, a \$25 fine.

551
 552 Any second or subsequent violation not within the 12-week time
 553 period after the first violation is punishable as provided for a
 554 first violation.

555 (8) PENALTIES FOR PERSONS UNDER THE AGE OF 21 MINORS.—

556 (a) A person under the age of 21 ~~18 years of age~~ cited for
 557 committing a noncriminal violation under this section must sign
 558 and accept a civil citation indicating a promise to appear
 559 before the county court or comply with the requirement for
 560 paying the fine and must attend a school-approved anti-tobacco
 561 and nicotine program, if locally available. If a fine is
 562 assessed for a violation of this section, the fine must be paid
 563 within 30 days after the date of the citation or, if a court
 564 appearance is mandatory, within 30 days after the date of the
 565 hearing.

566 (b) A person charged with a noncriminal violation under
 567 this section must appear before the county court or comply with
 568 the requirement for paying the fine. The court, after a hearing,
 569 shall make a determination as to whether the noncriminal
 570 violation was committed. If the court finds the violation was
 571 committed, it shall impose an appropriate penalty as specified
 572 in subsection (6) or subsection (7). A person who participates
 573 in community service shall be considered an employee of the
 574 state for the purpose of chapter 440, for the duration of such
 575 service.

576 (c) If a person under the age of 21 ~~18 years of age~~ is
577 found by the court to have committed a noncriminal violation
578 under this section and that person has failed to complete
579 community service, pay the fine as required by paragraph (6) (a)
580 or paragraph (7) (a), or attend a school-approved anti-tobacco
581 and nicotine program, if locally available, the court may direct
582 the Department of Highway Safety and Motor Vehicles to withhold
583 issuance of or suspend the driver license or driving privilege
584 of that person for 30 consecutive days.

585 (d) If a person under the age of 21 ~~18 years of age~~ is
586 found by the court to have committed a noncriminal violation
587 under this section and that person has failed to pay the
588 applicable fine as required by paragraph (6) (b) or paragraph
589 (7) (b), the court may direct the Department of Highway Safety
590 and Motor Vehicles to withhold issuance of or suspend the driver
591 license or driving privilege of that person for 45 consecutive
592 days.

593 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
594 civil penalties received by a county court pursuant to
595 subsections (6) and (7) shall be remitted by the clerk of the
596 court to the Department of Revenue for transfer to the
597 Department of Education to provide for teacher training and for
598 research and evaluation to reduce and prevent the use of tobacco
599 products, nicotine products, or nicotine dispensing devices by
600 children. The remaining 20 percent of civil penalties received

601 by a county court pursuant to this section shall remain with the
 602 clerk of the county court to cover administrative costs.

603 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
 604 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

609
 610 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
 611 PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF
 612 AGE IS REQUIRED FOR PURCHASE.

613
 614 (b) A retailer that sells nicotine products or nicotine
 615 dispensing devices shall provide at the checkout counter in a
 616 location clearly visible to the retailer or the retailer's agent
 617 or employee instructional material in a calendar format or
 618 similar format to assist in determining whether a person is of
 619 legal age to purchase nicotine products or nicotine dispensing
 620 devices. This point of sale material must contain substantially
 621 the following language:

622
 623 IF YOU WERE NOT BORN BEFORE THIS DATE
 624 (insert date and applicable year)
 625 YOU CANNOT BUY NICOTINE PRODUCTS OR

NICOTINE DISPENSING DEVICES.

626
627
628 In lieu of a calendar a retailer may use card readers, scanners,
629 or other electronic or automated systems that can verify whether
630 a person is of legal age to purchase nicotine products or
631 nicotine dispensing devices.

(11) SELF-SERVICE MERCHANDISING PROHIBITED.—

632
633 (a) A retailer that sells nicotine products or nicotine
634 dispensing devices may not sell, permit to be sold, offer for
635 sale, or display for sale such products or devices by means of
636 self-service merchandising.

637 (b) A retailer that sells nicotine products or nicotine
638 dispensing devices may not place such products or devices in an
639 open display unit unless the unit is located in an area that is
640 inaccessible to customers.

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

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

644
645
646 (a) In order to prevent persons under the age of 21 ~~18~~
647 ~~years of age~~ from purchasing or receiving nicotine products or
648 nicotine dispensing devices, the sale or delivery of such
649 products or devices is prohibited, except:

- 650 1. When under the direct control, or line of sight where

651 effective control may be reasonably maintained, of the retailer
652 of nicotine products or nicotine dispensing devices or such
653 retailer's agent or employee; or

654 2. Sales from a vending machine are prohibited under
655 subparagraph 1. and are only permissible from a machine that is
656 equipped with an operational lockout device which is under the
657 control of the retailer of nicotine products or nicotine
658 dispensing devices or such retailer's agent or employee who
659 directly regulates the sale of items through the machine by
660 triggering the lockout device to allow the dispensing of one
661 nicotine product or nicotine dispensing device. The lockout
662 device must include a mechanism to prevent the machine from
663 functioning, if the power source for the lockout device fails or
664 if the lockout device is disabled, and a mechanism to ensure
665 that only one nicotine product or nicotine dispensing device is
666 dispensed at a time.

667 (b) Paragraph (a) does not apply to an establishment that
668 prohibits persons under the age of 21 ~~18 years of age~~ on the
669 premises.

670 (c) A retailer of nicotine products or nicotine dispensing
671 devices or such retailer's agent or employee may require proof
672 of age of a purchaser of such products or devices before selling
673 the product or device to that person.

674 Section 15. This act shall take effect October 1, 2020.