

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 56-649 and insert:

Section 3. Paragraph (a) of subsection (5) of section 210.095, Florida Statutes, is amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.-

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

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

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

14 Products: Florida law prohibits shipping to individuals under
15 the 18 years of age of 21 and requires the payment of all
16 applicable taxes."

17
18 If the person accepting a purchase order for a delivery sale
19 delivers the tobacco products without using a delivery service,
20 the person must comply with all of the requirements of this
21 section which apply to a delivery service. Any failure to comply
22 with a requirement of this section constitutes a violation
23 thereof.

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

26 386.212 Smoking and vaping prohibited near school
27 property; penalty.—

28 (1) It is unlawful for any person under the 18 years of
29 age of 21 to smoke tobacco or any person under the age of 18 to
30 vape in, on, or within 1,000 feet of the real property
31 comprising a public or private elementary, middle, or secondary
32 school between the hours of 6 a.m. and midnight. This section
33 does not apply to any person occupying a moving vehicle or
34 within a private residence.

35 Section 5. Section 569.002, Florida Statutes, is amended
36 to read:

37 569.002 Definitions.—As used in this part ~~chapter~~, the
38 term:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

39 (1) "Dealer" is synonymous with the term "retail tobacco
40 products dealer."

41 (2) "Division" means the Division of Alcoholic Beverages
42 and Tobacco of the Department of Business and Professional
43 Regulation.

44 (3) "Nicotine product" has the same meaning as provided in
45 s. 569.31(4).

46 (4) "Nicotine dispensing device" has the same meaning as
47 provided in s. 569.31(3).

48 (5)~~(3)~~ "Permit" is synonymous with the term "retail
49 tobacco products dealer permit."

50 (6)~~(4)~~ "Retail tobacco products dealer" means the holder
51 of a retail tobacco products dealer permit.

52 (7)~~(5)~~ "Retail tobacco products dealer permit" means a
53 permit issued by the division pursuant to s. 569.003.

54 (8)~~(6)~~ "Tobacco products" includes loose tobacco leaves,
55 and products made from tobacco leaves, in whole or in part, and
56 cigarette wrappers, which can be used for smoking, sniffing, or
57 chewing.

58 (9)~~(7)~~ "Any person under the age of 21 ~~18~~" does not
59 include any person under the age of 21 ~~18~~ who:

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

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

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

64 (c) Is otherwise emancipated by a court of competent
65 jurisdiction and released from parental care and responsibility;
66 or

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

70 Section 6. Section 569.004, Florida Statutes, is amended
71 to read:

72 569.004 Consent to inspection and search without warrant.—
73 An applicant for a permit, by accepting the permit when issued,
74 agrees that the place or premises covered by the permit is
75 subject to inspection and search without a search warrant by the
76 division or its authorized assistants, and by sheriffs, deputy
77 sheriffs, or police officers, to determine compliance with this
78 chapter, including part II of this chapter if the applicant
79 deals, at retail, nicotine products within the state or allows a
80 nicotine products vending machine to be located on its premises
81 within the state.

82 Section 7. Section 569.006, Florida Statutes, is amended
83 to read:

84 569.006 Retail tobacco products dealers; administrative
85 penalties.—The division may suspend or revoke the permit of the
86 dealer upon sufficient cause appearing of the violation of any
87 of the provisions of this chapter, including part II of this
88 chapter if the dealer deals, at retail, nicotine products within

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

89 the state or allows a nicotine products vending machine to be
90 located on its premises within the state, by a dealer or by a
91 dealer's agent or employee. The division may also assess and
92 accept administrative fines of up to \$1,000 against a dealer for
93 each violation. The division shall deposit all fines collected
94 into the General Revenue Fund as collected. An order imposing an
95 administrative fine becomes effective 15 days after the date of
96 the order. The division may suspend the imposition of a penalty
97 against a dealer, conditioned upon the dealer's compliance with
98 terms the division considers appropriate.

99 Section 8. Subsections (1) and (2) of section 569.007,
100 Florida Statutes, are amended to read:

101 569.007 Sale or delivery of tobacco products;
102 restrictions.—

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

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

108 (b) Sales from a vending machine are prohibited under the
109 provisions of paragraph (1) (a) and are only permissible from a
110 machine that is equipped with an operational lockout device
111 which is under the control of the dealer or the dealer's agent
112 or employee who directly regulates the sale of items through the
113 machine by triggering the lockout device to allow the dispensing

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

114 of one tobacco product. The lockout device must include a
115 mechanism to prevent the machine from functioning if the power
116 source for the lockout device fails or if the lockout device is
117 disabled, and a mechanism to ensure that only one tobacco
118 product is dispensed at a time.

119 (2) The provisions of subsection (1) shall not apply to an
120 establishment that prohibits persons under the 18 years of age
121 of 21 on the licensed premises.

122 Section 9. Subsection (1) of section 569.0073, Florida
123 Statutes, is amended to read:

124 569.0073 Special provisions; smoking pipes and smoking
125 devices.—

126 (1) It is unlawful for any person to offer for sale at
127 retail any of the items listed in subsection (2) unless such
128 person:

129 (a) Has a retail tobacco products dealer permit under s.
130 569.003. The provisions of this chapter apply to any person that
131 offers for retail sale any of the items listed in subsection
132 (2); and

133 (b)1. Derives at least 75 percent of its annual gross
134 revenues from the retail sale of cigarettes, cigars, ~~and~~ other
135 tobacco products, or nicotine products; or

136 2. Derives no more than 25 percent of its annual gross
137 revenues from the retail sale of the items listed in subsection
138 (2).

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

139 Section 10. Section 569.0075, Florida Statutes, is amended
140 to read:

141 569.0075 Gift of sample tobacco products prohibited.—The
142 gift of sample tobacco products to any person under the age of
143 21 ~~18~~ by an entity licensed or permitted under the provisions of
144 chapter 210 or this chapter, or by an employee of such entity,
145 is prohibited and is punishable as provided in s. 569.101.

146 Section 11. Subsection (1), paragraphs (b) and (c) of
147 subsection (2), and subsection (3) of section 569.008, Florida
148 Statutes, are amended to read:

149 569.008 Responsible retail tobacco products dealers;
150 qualifications; mitigation of disciplinary penalties; diligent
151 management and supervision; presumption.—

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

156 (2) To qualify as a responsible retail tobacco products
157 dealer, the dealer must establish and implement procedures
158 designed to ensure that the dealer's employees comply with the
159 provisions of this chapter. The dealer must provide a training
160 program for the dealer's employees which addresses the use and
161 sale of tobacco products and which includes at least the
162 following topics:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

163 (b) Methods of recognizing and handling customers under
164 the 18 years of age of 21.

165 (c) Procedures for proper examination of identification
166 cards in order to verify that customers are not under the 18
167 years of age of 21.

168 (3) In determining penalties under s. 569.006, the
169 division may mitigate penalties imposed against a dealer because
170 of an employee's illegal sale of a tobacco product to a person
171 under the 18 years of age of 21 if the following conditions are
172 met:

173 (a) The dealer is qualified as a responsible dealer under
174 this section.

175 (b) The dealer provided the training program required
176 under subsection (2) to that employee before the illegal sale
177 occurred.

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

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

183 Section 12. Section 569.009, Florida Statutes, is amended
184 to read:

185 569.009 Rulemaking authority.—The division shall adopt any
186 rules necessary to administer and enforce the provisions of this
187 part chapter.

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

188 Section 13. Section 569.101, Florida Statutes, is amended
189 to read:

190 569.101 Selling, delivering, bartering, furnishing, or
191 giving tobacco products to persons under the 18 years of age of
192 21; criminal penalties; defense.—

193 (1) It is unlawful to sell, deliver, barter, furnish, or
194 give, directly or indirectly, to any person who is under the 18
195 years of age of 21, any tobacco product.

196 (2) Any person who violates subsection (1) commits a
197 misdemeanor of the second degree, punishable as provided in s.
198 775.082 or s. 775.083. However, any person who violates
199 subsection (1) for a second or subsequent time within 1 year of
200 the first violation, commits a misdemeanor of the first degree,
201 punishable as provided in s. 775.082 or s. 775.083.

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

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

207 (b) The appearance of the buyer or recipient was such that
208 a prudent person would believe the buyer or recipient to be 21
209 ~~18~~ years of age or older; and

210 (c) Such person carefully checked a driver license or an
211 identification card issued by this state or another state of the
212 United States, a passport, or a United States armed services

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

213 identification card presented by the buyer or recipient and
214 acted in good faith and in reliance upon the representation and
215 appearance of the buyer or recipient in the belief that the
216 buyer or recipient was 21 ~~18~~ years of age or older.

217 Section 14. Section 569.11, Florida Statutes, is amended
218 to read:

219 569.11 Possession, misrepresenting age or military service
220 to purchase, and purchase of tobacco products by persons under
221 18 years of age prohibited; penalties; jurisdiction; disposition
222 of fines.—

223 (1) It is unlawful for any person under the 18 years of
224 age of 21 to knowingly possess any tobacco product. Any person
225 under the 18 years of age of 21 who violates this subsection
226 commits a noncriminal violation as provided in s. 775.08(3),
227 punishable by:

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

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

234

235 Any second or subsequent violation not within the 12-week period
236 after the first violation is punishable as provided for a first
237 violation.

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

238 (2) It is unlawful for any person under the 18 years of
239 age of 21 to misrepresent his or her age or military service for
240 the purpose of inducing a dealer or an agent or employee of the
241 dealer to sell, give, barter, furnish, or deliver any tobacco
242 product, or to purchase, or attempt to purchase, any tobacco
243 product from a person or a vending machine. Any person under the
244 ~~18 years of~~ age of 21 who violates this subsection commits a
245 noncriminal violation as provided in s. 775.08(3), punishable
246 by:

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

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

253
254 Any second or subsequent violation not within the 12-week period
255 after the first violation is punishable as provided for a first
256 violation.

257 (3) Any person under the 18 years of age of 21 cited for
258 committing a noncriminal violation under this section must sign
259 and accept a civil citation indicating a promise to appear
260 before the county court or comply with the requirement for
261 paying the fine and must attend a school-approved anti-tobacco
262 program, if locally available. If a fine is assessed for a

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

263 violation of this section, the fine must be paid within 30 days
264 after the date of the citation or, if a court appearance is
265 mandatory, within 30 days after the date of the hearing.

266 (4) A person charged with a noncriminal violation under
267 this section must appear before the county court or comply with
268 the requirement for paying the fine. The court, after a hearing,
269 shall make a determination as to whether the noncriminal
270 violation was committed. If the court finds the violation was
271 committed, it shall impose an appropriate penalty as specified
272 in subsection (1) or subsection (2). A person who participates
273 in community service shall be considered an employee of the
274 state for the purpose of chapter 440, for the duration of such
275 service.

276 (5) (a) If a person under 18 years of age is found by the
277 court to have committed a noncriminal violation under this
278 section and that person has failed to complete community
279 service, pay the fine as required by paragraph (1) (a) or
280 paragraph (2) (a), or attend a school-approved anti-tobacco
281 program, if locally available, the court may direct the
282 Department of Highway Safety and Motor Vehicles to withhold
283 issuance of or suspend the driver license or driving privilege
284 of that person for a period of 30 consecutive days.

285 (b) If a person under the 18 years of age of 21 is found
286 by the court to have committed a noncriminal violation under
287 this section and that person has failed to pay the applicable

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

288 fine as required by paragraph (1)(b) or paragraph (2)(b), the
289 court may direct the Department of Highway Safety and Motor
290 Vehicles to withhold issuance of or suspend the driver license
291 or driving privilege of that person for a period of 45
292 consecutive days.

293 (6) Eighty percent of all civil penalties received by a
294 county court pursuant to this section shall be remitted by the
295 clerk of the court to the Department of Revenue for transfer to
296 the Department of Education to provide for teacher training and
297 for research and evaluation to reduce and prevent the use of
298 tobacco products by children. The remaining 20 percent of civil
299 penalties received by a county court pursuant to this section
300 shall remain with the clerk of the county court to cover
301 administrative costs.

302 Section 15. Section 569.12, Florida Statutes, is amended
303 to read:

304 569.12 Jurisdiction; tobacco product and nicotine product
305 enforcement officers or agents; enforcement.—

306 (1) In addition to the Division of Alcoholic Beverages and
307 Tobacco of the Department of Business and Professional
308 Regulation, any law enforcement officer certified under s.
309 943.10(1), (6), or (8) shall enforce the provisions of this
310 chapter.

311 (2)(a) A county or municipality may designate certain of
312 its employees or agents as tobacco product and nicotine product

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

313 enforcement officers. The training and qualifications of the
314 employees or agents for such designation shall be determined by
315 the county or the municipality. Nothing in this section shall be
316 construed to permit the carrying of firearms or other weapons by
317 a tobacco product and nicotine product enforcement agent, nor
318 does designation as a tobacco product and nicotine product
319 enforcement officer provide the employee or agent with the power
320 of arrest or subject the employee or agent to the provisions of
321 ss. 943.085-943.255. Nothing in this section amends, alters, or
322 contravenes the provisions of any state-administered retirement
323 system or any state-supported retirement system established by
324 general law.

325 (b) A tobacco and nicotine product enforcement officer is
326 authorized to issue a citation to a person under the age of 21
327 ~~18~~ or under the age of 18, as applicable when, based upon
328 personal investigation, the officer has reasonable cause to
329 believe that the person has committed a civil infraction in
330 violation of s. 386.212, ~~or~~ s. 569.11, or s. 569.42.

331 (3) A correctional probation officer as defined in s.
332 943.10(3) is authorized to issue a citation to a person under
333 the age of 21 ~~18~~ or under the age of 18, as applicable when,
334 based upon personal investigation, the officer has reasonable
335 cause to believe that the person has committed a civil
336 infraction in violation of s. 569.11 or s. 569.42.

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

337 (4) A citation issued to any person violating the
338 provisions of s. 569.11 or s. 569.42 shall be in a form
339 prescribed by the Division of Alcoholic Beverages and Tobacco of
340 the Department of Business and Professional Regulation and shall
341 contain:

342 (a) The date and time of issuance.

343 (b) The name and address of the person to whom the
344 citation is issued.

345 (c) The date and time the civil infraction was committed.

346 (d) The facts constituting reasonable cause.

347 (e) The number of the Florida statute violated.

348 (f) The name and authority of the citing officer.

349 (g) The procedure for the person to follow in order to
350 contest the citation, perform the required community service,
351 attend the required anti-tobacco or anti-tobacco and anti-
352 nicotine program, or to pay the civil penalty.

353 Section 16. Subsection (2) of section 569.14, Florida
354 Statutes, is amended to read:

355 569.14 Posting of a sign stating that the sale of tobacco
356 products to persons under the ~~18 years of age~~ of 21 is unlawful;
357 enforcement; penalty.-

358 (2) A dealer that sells tobacco products and nicotine
359 products or nicotine dispensing devices, ~~as defined in s.~~
360 ~~877.112,~~ may use a sign that substantially states the following:
361

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

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

365

366 A dealer that uses a sign as described in this subsection meets
367 the signage requirements of subsection (1) ~~and s. 877.112.~~

368 Section 17. Section 569.19, Florida Statutes, is amended
369 to read:

370 569.19 Annual report.—The division shall report annually
371 with written findings to the Legislature and the Governor by
372 December 31, on the progress of implementing the enforcement
373 provisions of this part ~~chapter~~. This must include, but is not
374 limited to:

375 (1) The number and results of compliance visits.

376 (2) The number of violations for failure of a retailer to
377 hold a valid license.

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

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

384 Section 18. Section 569.31, Florida Statutes, is created
385 to read:

386 569.31 Definitions.—As used in this part, the term:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

387 (1) "Dealer" is synonymous with the term "retail nicotine
388 products dealer."

389 (2) "Division" means the Division of Alcoholic Beverages
390 and Tobacco of the Department of Business and Professional
391 Regulation.

392 (3) "Nicotine dispensing device" means any product that
393 employs an electronic, chemical, or mechanical means to produce
394 vapor or aerosol from a nicotine product, including, but not
395 limited to, an electronic cigarette, electronic cigar,
396 electronic cigarillo, electronic pipe, or other similar device
397 or product, any replacement cartridge for such device, and any
398 other container of nicotine in a solution or other form intended
399 to be used with or within an electronic cigarette, electronic
400 cigar, electronic cigarillo, electronic pipe, or other similar
401 device or product.

402 (4) "Nicotine product" means any product that contains
403 nicotine, including liquid nicotine, which is intended for human
404 consumption, whether inhaled, chewed, absorbed, dissolved, or
405 ingested by any means. The term also includes any nicotine
406 dispensing device. The term does not include a:

407 (a) Tobacco product, as defined in s. 569.002;

408 (b) Product regulated as a drug or device by the United
409 States Food and Drug Administration under Chapter V of the
410 Federal Food, Drug, and Cosmetic Act; or

411 (c) Product that contains incidental nicotine.

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

412 (5) "Permit" is synonymous with the term "retail nicotine
413 products dealer permit."

414 (6) "Retail nicotine products dealer" means the holder of
415 a retail nicotine products dealer permit.

416 (7) "Retail nicotine products dealer permit" means a
417 permit issued by the division under s. 569.32.

418 (8) "Self-service merchandising" means the open display of
419 nicotine products, whether packaged or otherwise, for direct
420 retail customer access and handling before purchase without the
421 intervention or assistance of the retailer or the retailer's
422 owner, employee, or agent. An open display of such products and
423 devices includes the use of an open display unit.

424 (9) "Any person under the age of 18" does not include any
425 person under the age of 18 who:

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

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

430 (c) Is otherwise emancipated by a court of competent
431 jurisdiction and released from parental care and responsibility;
432 or

433 (d) Is acting in his or her scope of lawful employment.

434 Section 19. Section 569.32, Florida Statutes, is created
435 to read:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

436 569.32 Retail nicotine products dealer permits;
437 application; qualifications; renewal; duplicates.—

438 (1) (a) Each person, firm, association, or corporation that
439 seeks to deal, at retail, in nicotine products within the state,
440 or to allow a nicotine products vending machine to be located on
441 its premises in the state, must obtain a retail nicotine
442 products dealer permit for each place of business or the
443 premises at which nicotine products are sold. Each dealer
444 owning, leasing, furnishing, or operating vending machines
445 through which nicotine products are sold must obtain a permit
446 for each machine and shall post the permit in a conspicuous
447 place on or near the machine; however, if the dealer has more
448 than one vending machine at a single location or if nicotine
449 products are sold both over the counter and through a vending
450 machine at a single location, the dealer need obtain only one
451 permit for that location.

452 (b) Application for a permit must be made on a form
453 furnished by the division and must set forth the name under
454 which the applicant transacts or intends to transact business,
455 the address of the location of the applicant's place of business
456 within the state, and any other information the division
457 requires. If the applicant has or intends to have more than one
458 place of business dealing in nicotine products within the state,
459 a separate application must be made for each place of business.
460 If the applicant is a firm or an association, the application

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

461 must set forth the names and addresses of the persons
462 constituting the firm or association; if the applicant is a
463 corporation, the application must set forth the names and
464 addresses of the principal officers of the corporation. The
465 application must also set forth any other information prescribed
466 by the division for the purpose of identifying the applicant
467 firm, association, or corporation. The application must be
468 signed and verified by oath or affirmation by the owner, if a
469 sole proprietor, or, if the owner is a firm, association, or
470 partnership, by the members or partners thereof, or, if the
471 owner is a corporation, by an executive officer of the
472 corporation or by a person authorized by the corporation to sign
473 the application, together with the written evidence of this
474 authority.

475 (2) (a) Permits may be issued only to persons who are 18
476 years of age or older or to corporations the officers of which
477 are 18 years of age or older.

478 (b) The division may refuse to issue a permit to any
479 person, firm, association, or corporation the permit of which
480 has been revoked, to any corporation an officer of which has had
481 his or her permit revoked, or to any person who is or has been
482 an officer of a corporation the permit of which has been
483 revoked. Any permit issued to a firm, association, or
484 corporation prohibited from obtaining a permit under this
485 chapter shall be revoked by the division.

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

486 (3) Upon approval of an application for a permit, the
487 division shall issue to the applicant a permit for the place of
488 business or premises specified in the application. A permit is
489 not assignable and is valid only for the person in whose name
490 the permit is issued and for the place designated in the permit.
491 The permit shall be conspicuously displayed at all times at the
492 place for which issued.

493 Section 20. Section 569.33 Florida Statutes, is created to
494 read:

495 569.33 Consent to inspection and search without warrant.-
496 An applicant for a retail nicotine products dealer permit, by
497 accepting the permit when issued, agrees that the place or
498 premises covered by the permit is subject to inspection and
499 search without a search warrant by the division or its
500 authorized assistants, and by sheriffs, deputy sheriffs, or
501 police officers, to determine compliance with this part.

502 Section 21. Section 569.34, Florida Statutes, is created
503 to read:

504 569.34 Operating without a retail nicotine products dealer
505 permit; penalty.-

506 (1) It is unlawful for a person, firm, association, or
507 corporation to deal, at retail, in nicotine products, in any
508 manner, or to allow a nicotine products vending machine to be
509 located on its premises, without having a retail nicotine
510 product dealer permit as required by s. 569.32. A person who

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

511 violates this section commits a noncriminal violation,
512 punishable by a fine of not more than \$500.

513 (2) A retail tobacco products dealer, as defined in s.
514 569.002, is not required to have a separate or additional retail
515 nicotine products dealer permit to deal, at retail, nicotine
516 products in the state, or allow a nicotine products vending
517 machine to be located on its premises in the state. Any retail
518 tobacco products dealer that deals, at retail, in nicotine
519 products or allows a tobacco products vending machine to be
520 located on its premises in the state, is subject to, and must be
521 in compliance with, this part.

522 (3) Any person who violates this section shall be cited
523 for such infraction and shall be cited to appear before the
524 county court. The citation may indicate the time, date, and
525 location of the scheduled hearing and must indicate that the
526 penalty for a noncriminal violation is a fine of not more than
527 \$500.

528 (a) A person cited for an infraction under this section
529 may:

- 530 1. Post a \$500 bond; or
531 2. Sign and accept the citation indicating a promise to
532 appear.

533 (b) A person cited for violating this section may:

- 534 1. Pay the fine, either by mail or in person, within 10
535 days after receiving the citation; or

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

536 2. If the person has posted bond, forfeit the bond by not
537 appearing at the scheduled hearing.

538 (c) If the person pays the fine or forfeits bond, the
539 person is deemed to have admitted violating this section and to
540 have waived the right to a hearing on the issue of commission of
541 the violation. Such admission may not be used as evidence in any
542 other proceeding.

543 (d) The court, after a hearing, shall make a determination
544 as to whether an infraction has been committed. If the
545 commission of an infraction has been proven beyond a reasonable
546 doubt, the court may impose a civil penalty in an amount that
547 may not exceed \$500.

548 (e) If a person is found by the court to have committed
549 the infraction, that person may appeal that finding to the
550 circuit court.

551 Section 22. Section 569.35, Florida Statutes, is created
552 to read:

553 569.35 Retail nicotine product dealers; administrative
554 penalties.—The division may suspend or revoke the permit of a
555 dealer, including the retail tobacco products dealer permit of a
556 retail tobacco products dealer as defined in s. 569.002, upon
557 sufficient cause appearing of the violation of any of the
558 provisions of this part, by a dealer, or by a dealer's agent or
559 employee. The division may also assess and accept an
560 administrative fine of up to \$1,000 against a dealer for each

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

561 violation. The division shall deposit all fines collected into
562 the General Revenue Fund as collected. An order imposing an
563 administrative fine becomes effective 15 days after the date of
564 the order. The division may suspend the imposition of a penalty
565 against a dealer, conditioned upon the dealer's compliance with
566 terms the division considers appropriate.

567 Section 23. Section 569.37, Florida Statutes, is created
568 to read:

569 569.37 Sale or delivery of nicotine products;
570 restrictions.-

571 (1) In order to prevent persons under 18 years of age from
572 purchasing or receiving nicotine products, the sale or delivery
573 of nicotine products is prohibited, except:

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

576 (b) Sales from a vending machine are prohibited under
577 paragraph (a) and are only permissible from a machine that is
578 equipped with an operational lockout device that is under the
579 control of the dealer or the dealer's agent or employee who
580 directly regulates the sale of items through the machine by
581 triggering the lockout device to allow the dispensing of one
582 nicotine product. The lockout device must include a mechanism to
583 prevent the machine from functioning if the power source for the
584 lockout device fails or if the lockout device is disabled, and a

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

585 mechanism to ensure that only one nicotine product is dispensed
586 at a time.

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

590 (b) A dealer that sells nicotine products may not place
591 such products or devices in an open display unit unless the unit
592 is located in an area that is inaccessible to customers.

593 (3) The provisions of subsections (1) and (2) shall not
594 apply to an establishment that prohibits persons under 18 years
595 of age on the licensed premises.

596 (4) A dealer or a dealer's agent or employee may require
597 proof of age of a purchaser of a nicotine product before selling
598 the product or device to that person.

599 Section 24. Section 569.38, Florida Statutes, is created
600 to read:

601 569.38 Gift of sample nicotine products and nicotine
602 dispensing devices.—The gift of sample nicotine products to any
603 person under the age of 18 by an entity permitted under this
604 chapter, or by an employee of such entity, is prohibited and is
605 punishable as provided in s. 569.41.

606 Section 25. Section 569.381, Florida Statutes, is created
607 to read:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

608 569.381 Responsible retail nicotine products dealers;
609 qualifications; mitigation of disciplinary penalties; diligent
610 management and supervision; presumption.-

611 (1) It is the intent of the Legislature to prevent the
612 sale of nicotine products to persons under 18 years of age and
613 to encourage retail nicotine products dealers to comply with
614 responsible practices in accordance with this section.

615 (2) To qualify as a responsible retail nicotine products
616 dealer, the dealer must establish and implement procedures
617 designed to ensure that the dealer's employees comply with this
618 part. The dealer must provide a training program for the
619 dealer's employees which addresses the use and sale of nicotine
620 products and which includes at least the following topics:

621 (a) Laws covering the sale of nicotine products.

622 (b) Methods of recognizing and handling customers under 18
623 years of age.

624 (c) Procedures for proper examination of identification
625 cards in order to verify that customers are not under 18 years
626 of age.

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

629 (3) In determining penalties under s. 569.35, the division
630 may mitigate penalties imposed against a dealer because of an
631 employee's illegal sale of a nicotine product to a person under
632 18 years of age if the following conditions are met:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

633 (a) The dealer is qualified as a responsible dealer under
634 this section.

635 (b) The dealer provided the training program required
636 under subsection (2) to that employee before the illegal sale
637 occurred.

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

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

643 (4) The division shall develop and make available a model
644 nicotine products training program designed to ensure adherence
645 to this chapter by dealers and their employees which, if
646 followed, will qualify dealers as responsible dealers.

647 (5) Dealers shall exercise diligence in the management and
648 supervision of their premises and in the supervision and
649 training of their employees, agents, or servants. In proceedings
650 to impose penalties under s. 569.35, proof that employees,
651 agents, or servants of the dealer, while in the scope of their
652 employment, committed at least three violations of s. 569.41
653 during a 180-day period shall be prima facie evidence of a lack
654 of due diligence by the dealer in the management and supervision
655 of his or her premises and in the supervision and training of
656 employees, agents, officers, or servants.

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

657 (6) The division may consider qualification as a
658 responsible retail nicotine products dealer under this section
659 as evidence that the dealer properly exercised the diligence
660 required under this section.

661 Section 26. Section 569.39, Florida Statutes, is created
662 to read:

663 569.39 Rulemaking authority.—The division shall adopt any
664 rules necessary to administer and enforce the provisions of this
665 part.

666 Section 27. Section 569.41, Florida Statutes, is created
667 to read:

668 569.41 Selling, delivering, bartering, furnishing, or
669 giving nicotine products to persons under 18 years of age;
670 criminal penalties; defense.—

671 (1) It is unlawful to sell, deliver, barter, furnish, or
672 give, directly or indirectly, to any person who is under 18
673 years of age, any nicotine product.

674 (2) Any person who violates subsection (1) commits a
675 misdemeanor of the second degree, punishable as provided in s.
676 775.082 or s. 775.083. However, any person who violates
677 subsection (1) for a second or subsequent time within 1 year
678 after the first violation commits a misdemeanor of the first
679 degree, punishable as provided in s. 775.082 or s. 775.083.

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

680 (3) A person charged with a violation of subsection (1)
681 has a complete defense if, at the time the nicotine product was
682 sold, delivered, bartered, furnished, or given:

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

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

688 (c) Such person carefully checked a driver license or an
689 identification card issued by the state or another state of the
690 United States, a passport, or a United States armed services
691 identification card presented by the buyer or recipient and
692 acted in good faith and in reliance upon the representation and
693 appearance of the buyer or recipient in the belief that the
694 buyer or recipient was 18 years of age or older.

695 Section 28. Section 569.42, Florida Statutes, is created
696 to read:

697 569.42 Possession, misrepresenting age or military service
698 to purchase, and purchase of nicotine products by persons under
699 18 years of age prohibited; penalties; jurisdiction; disposition
700 of fines.—

701 (1) It is unlawful for any person under 18 years of age to
702 knowingly possess any nicotine product. Any person under 18
703 years of age who violates this subsection commits a noncriminal
704 violation as provided in s. 775.08(3), punishable by:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

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

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

711
712 Any second or subsequent violation not within the 12-week period
713 after the first violation is punishable as provided for a first
714 violation.

715 (2) It is unlawful for any person under 18 years of age to
716 misrepresent his or her age or military service for the purpose
717 of inducing a dealer or an agent or employee of the dealer to
718 sell, give, barter, furnish, or deliver any nicotine product, or
719 to purchase, or attempt to purchase, any nicotine product from a
720 person or a vending machine. Any person under 18 years of age
721 who violates this subsection commits a noncriminal violation as
722 defined in s. 775.08(3), punishable by:

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

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

729

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

730 Any second or subsequent violation not within the 12-week period
731 after the first violation is punishable as provided for a first
732 violation.

733 (3) Any person under 18 years of age cited for committing
734 a noncriminal violation under this section must sign and accept
735 a civil citation indicating a promise to appear before the
736 county court or comply with the requirement for paying the fine
737 and must attend a school-approved anti-tobacco and anti-nicotine
738 program, if locally available. If a fine is assessed for a
739 violation of this section, the fine must be paid within 30 days
740 after the date of the citation or, if a court appearance is
741 mandatory, within 30 days after the date of the hearing.

742 (4) A person charged with a noncriminal violation under
743 this section must appear before the county court or comply with
744 the requirement for paying the fine. The court, after a hearing,
745 shall make a determination as to whether the noncriminal
746 violation was committed. If the court finds the violation was
747 committed, it shall impose an appropriate penalty as specified
748 in subsection (1) or subsection (2). A person who participates
749 in community service shall be considered an employee of the
750 state for the purpose of chapter 440, for the duration of such
751 service.

752 (5) (a) If a person under 18 years of age is found by the
753 court to have committed a noncriminal violation under this
754 section and the person has failed to complete community service,

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

755 pay the fine as required by paragraph (1) (a) or paragraph
756 (2) (a), or attend a school-approved anti-tobacco and anti-
757 nicotine program, if locally available, the court may direct the
758 Department of Highway Safety and Motor Vehicles to withhold
759 issuance of or suspend the driver license or driving privilege
760 of that person for a period of 30 consecutive days.

761 (b) If a person under 18 years of age is found by the
762 court to have committed a noncriminal violation under this
763 section and that person has failed to pay the applicable fine as
764 required by paragraph (1) (b) or paragraph (2) (b), the court may
765 direct the Department of Highway Safety and Motor Vehicles to
766 withhold issuance of or suspend the driver license or driving
767 privilege of that person for a period of 45 consecutive days.

768 (6) Eighty percent of all civil penalties received by a
769 county court under this section shall be remitted by the clerk
770 of the court to the Department of Revenue for transfer to the
771 Department of Education to provide for teacher training and for
772 research and evaluation to reduce and prevent the use of
773 nicotine products by children. The remaining 20 percent of civil
774 penalties received by a county court under this section shall
775 remain with the clerk of the county court to cover
776 administrative costs.

777 Section 29. Section 569.43, Florida Statutes, is created
778 to read:

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

779 569.43 Posting of a sign stating that the sale of nicotine
780 products to persons under 18 years of age is unlawful;
781 enforcement; penalty.-

782 (1) A dealer that sells nicotine products shall post a
783 clear and conspicuous sign in each place of business at which
784 such products are sold which substantially states the following:

785
786 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING
787 DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST
788 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

789
790 (2) The division shall make available to dealers of
791 nicotine products signs that meet the requirements of subsection
792 (1).

793 (3) Any dealer that sells nicotine products shall provide
794 at the checkout counter in a location clearly visible to the
795 dealer or the dealer's agent or employee instructional material
796 in a calendar format or similar format to assist in determining
797 whether a person is of legal age to purchase nicotine products.
798 This point of sale material must contain substantially the
799 following language:

800
801 IF YOU WERE NOT BORN BEFORE THIS DATE
802 (insert date and applicable year)
803 YOU CANNOT BUY NICOTINE PRODUCTS

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

804 OR NICOTINE DISPENSING DEVICES.
 805
 806 Upon approval by the division, in lieu of a calendar a dealer
 807 may use card readers, scanners, or other electronic or automated
 808 systems that can verify whether a person is of legal age to
 809 purchase nicotine products. Failure to comply with the
 810 provisions contained in this subsection shall result in
 811 imposition of administrative penalties as provided in s. 569.35.

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

814 (5) Any person who fails to comply with subsection (1)
 815 commits a misdemeanor of the second degree, punishable as
 816 provided in s. 775.082 or s. 775.083.

817
 818 -----

819 **T I T L E A M E N D M E N T**

820 Remove lines 2-6 and insert:
 821 An act relating to tobacco and nicotine products;
 822 renaming ch. 569, F.S.; providing directives to the
 823 Division of Law Revision; amending ss. 210.095 and
 824 386.212, F.S.; conforming provisions to changes made
 825 by the act; amending s. 569.002, F.S.; providing
 826 definitions; revising the definition of the term "any
 827 person under the age of 18" to increase the age to 21
 828 for purposes of the act; amending ss. 569.004,

529973

Approved For Filing: 3/3/2020 3:36:27 PM

Amendment No.

829 | 569.006, 569.007, 569.0075, 569.008, 569.009, 569.101,
830 | 569.11,

529973

Approved For Filing: 3/3/2020 3:36:27 PM