

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

|                       |               |       |
|-----------------------|---------------|-------|
| ADOPTED               | <u>    </u>   | (Y/N) |
| ADOPTED AS AMENDED    | <u>    </u>   | (Y/N) |
| ADOPTED W/O OBJECTION | <u>    </u>   | (Y/N) |
| FAILED TO ADOPT       | <u>    </u>   | (Y/N) |
| WITHDRAWN             | <u>    </u>   | (Y/N) |
| OTHER                 | <u>      </u> |       |

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Toledo offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Chapter 569, entitled "Tobacco Products," is  
 7 renamed "Tobacco and Nicotine Products."

8 Section 2. The Division of Law Revision is directed to:

9 (1) Create part I of chapter 569, Florida Statutes,  
 10 consisting of ss. 569.002-569.23, Florida Statutes, to be  
 11 entitled "Tobacco Products."

12 (2) Create part II of chapter 569, Florida Statutes,  
 13 consisting of ss. 569.31-569.45, Florida Statutes, to be  
 14 entitled "Nicotine Products."

15 Section 3. Subsections (3), (4), (5), (6), and (7) of  
 16 section 569.002, Florida Statutes, are amended to read:

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17 569.002 Definitions.—As used in this part ~~chapter~~, the  
18 term:

19 (3) "Nicotine product" has the same meaning as provided in  
20 s. 569.31.

21 (4) "Nicotine dispensing device" has the same meaning as  
22 provided in s. 569.31.

23 (5)~~(3)~~ "Permit" is synonymous with the term "retail  
24 tobacco products dealer permit."

25 (6)~~(4)~~ "Retail tobacco products dealer" means the holder  
26 of a retail tobacco products dealer permit.

27 (7)~~(5)~~ "Retail tobacco products dealer permit" means a  
28 permit issued by the division pursuant to s. 569.003.

29 (8)~~(6)~~ "Tobacco products" includes loose tobacco leaves,  
30 and products made from tobacco leaves, in whole or in part, and  
31 cigarette wrappers, which can be used for smoking, sniffing, or  
32 chewing.

33 (9)~~(7)~~ "Any person under the age of 18" does not include  
34 any person under the age of 18 who:

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

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

39 (c) Is otherwise emancipated by a court of competent  
40 jurisdiction and released from parental care and responsibility;

41 or

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

45 Section 4. Section 569.004, Florida Statutes, is amended  
46 to read:

47 569.004 Consent to inspection and search without warrant.—  
48 An applicant for a permit, by accepting the permit when issued,  
49 agrees that the place or premises covered by the permit is  
50 subject to inspection and search without a search warrant by the  
51 division or its authorized assistants, and by sheriffs, deputy  
52 sheriffs, or police officers, to determine compliance with this  
53 chapter, including part II of this chapter if the applicant  
54 deals, at retail, nicotine products within the state or allows a  
55 nicotine products vending machine to be located on its premises  
56 within the state.

57 Section 5. Section 569.006, Florida Statutes, is amended  
58 to read:

59 569.006 Retail tobacco products dealers; administrative  
60 penalties.—The division may suspend or revoke the permit of the  
61 dealer upon sufficient cause appearing of the violation of any  
62 of the provisions of this chapter, including part II of this  
63 chapter if the dealer deals, at retail, nicotine products within  
64 the state or allows a nicotine products vending machine to be  
65 located on its premises within the state, by a dealer or by a  
66 dealer's agent or employee. The division may also assess and

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67 accept administrative fines of up to \$1,000 against a dealer for  
68 each violation. The division shall deposit all fines collected  
69 into the General Revenue Fund as collected. An order imposing an  
70 administrative fine becomes effective 15 days after the date of  
71 the order. The division may suspend the imposition of a penalty  
72 against a dealer, conditioned upon the dealer's compliance with  
73 terms the division considers appropriate.

74 Section 6. Subsection (1) of section 569.0073, Florida  
75 Statutes, is amended to read:

76 569.0073 Special provisions; smoking pipes and smoking  
77 devices.—

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

81 (a) Has a retail tobacco products dealer permit under s.  
82 569.003. The provisions of this chapter apply to any person that  
83 offers for retail sale any of the items listed in subsection  
84 (2); and

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

88 2. Derives no more than 25 percent of its annual gross  
89 revenues from the retail sale of the items listed in subsection  
90 (2).

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91 Section 7. Section 569.009, Florida Statutes, is amended  
92 to read:

93 569.009 Rulemaking authority.—The division shall adopt any  
94 rules necessary to administer and enforce the provisions of this  
95 part chapter.

96 Section 8. Section 569.12, Florida Statutes, is amended to  
97 read:

98 569.12 Jurisdiction; tobacco product and nicotine product  
99 enforcement officers or agents; enforcement.—

100 (1) In addition to the Division of Alcoholic Beverages and  
101 Tobacco of the Department of Business and Professional  
102 Regulation, any law enforcement officer certified under s.  
103 943.10(1), (6), or (8) shall enforce the provisions of this  
104 chapter.

105 (2) (a) A county or municipality may designate certain of  
106 its employees or agents as tobacco product and nicotine product  
107 enforcement officers. The training and qualifications of the  
108 employees or agents for such designation shall be determined by  
109 the county or the municipality. Nothing in this section shall be  
110 construed to permit the carrying of firearms or other weapons by  
111 a tobacco product and nicotine product enforcement agent, nor  
112 does designation as a tobacco product and nicotine product  
113 enforcement officer provide the employee or agent with the power  
114 of arrest or subject the employee or agent to the provisions of  
115 ss. 943.085-943.255. Nothing in this section amends, alters, or

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116 | contravenes the provisions of any state-administered retirement  
117 | system or any state-supported retirement system established by  
118 | general law.

119 |       (b) A tobacco and nicotine product enforcement officer is  
120 | authorized to issue a citation to a person under the age of 18  
121 | when, based upon personal investigation, the officer has  
122 | reasonable cause to believe that the person has committed a  
123 | civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s.  
124 | 569.42.

125 |       (3) A correctional probation officer as defined in s.  
126 | 943.10(3) is authorized to issue a citation to a person under  
127 | the age of 18 when, based upon personal investigation, the  
128 | officer has reasonable cause to believe that the person has  
129 | committed a civil infraction in violation of s. 569.11 or s.  
130 | 569.42.

131 |       (4) A citation issued to any person violating the  
132 | provisions of s. 569.11 or s. 569.42 shall be in a form  
133 | prescribed by the Division of Alcoholic Beverages and Tobacco of  
134 | the Department of Business and Professional Regulation and shall  
135 | contain:

136 |           (a) The date and time of issuance.

137 |           (b) The name and address of the person to whom the  
138 | citation is issued.

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

140 |           (d) The facts constituting reasonable cause.

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- 141 (e) The number of the Florida statute violated.  
142 (f) The name and authority of the citing officer.  
143 (g) The procedure for the person to follow in order to  
144 contest the citation, perform the required community service,  
145 attend the required anti-tobacco or anti-tobacco and anti-  
146 nicotine program, or to pay the civil penalty.

147 Section 9. Subsections (2) and (4) of section 569.14,  
148 Florida Statutes, are amended to read:

149 569.14 Posting of a sign stating that the sale of tobacco  
150 products or nicotine products to persons under 18 years of age  
151 is unlawful; enforcement; penalty.—

152 (2) A dealer that sells tobacco products and nicotine  
153 products or nicotine dispensing devices, ~~as defined in s.~~  
154 ~~877.112,~~ may use a sign that substantially states the following:

155  
156 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
157 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST  
158 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

159  
160 A dealer that uses a sign as described in this subsection meets  
161 the signage requirements of subsection (1) and s. 569.43(1) ~~s.~~  
162 ~~877.112.~~

163 (4) Any dealer that sells tobacco products shall provide  
164 at the checkout counter in a location clearly visible to the  
165 dealer or the dealer's agent or employee instructional material

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166 in a calendar format or similar format to assist in determining  
167 whether a person is of legal age to purchase tobacco products.  
168 This point of sale material must contain substantially the  
169 following language:

170 IF YOU WERE NOT BORN BEFORE THIS DATE

171 (insert date and applicable year)

172 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
173 DISPENSING DEVICES.

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

180 Section 10. Section 569.19, Florida Statutes, is amended  
181 to read:

182 569.19 Annual report.—The division shall report annually  
183 with written findings to the Legislature and the Governor by  
184 December 31, on the progress of implementing the enforcement  
185 provisions of this part ~~chapter~~. This must include, but is not  
186 limited to:

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

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



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190 (3) The number of violations for selling tobacco products  
191 to persons under age 18, and the results of administrative  
192 hearings on the above and related issues.

193 (4) The number of persons under age 18 cited for  
194 violations of s. 569.11 and sanctions imposed as a result of  
195 citation.

196 Section 11. Section 569.31, Florida Statutes, is created  
197 to read:

198 569.31 Definitions.—As used in this part, the term:

199 (1) "Dealer" is synonymous with the term "retail nicotine  
200 products dealer."

201 (2) "Division" means the Division of Alcoholic Beverages  
202 and Tobacco of the Department of Business and Professional  
203 Regulation.

204 (3) "Nicotine dispensing device" means any product that  
205 employs an electronic, chemical, or mechanical means to produce  
206 vapor or aerosol from a nicotine product, including, but not  
207 limited to, an electronic cigarette, electronic cigar,  
208 electronic cigarillo, electronic pipe, or other similar device  
209 or product, any replacement cartridge for such device, and any  
210 other container of nicotine in a solution or other form intended  
211 to be used with or within an electronic cigarette, electronic  
212 cigar, electronic cigarillo, electronic pipe, or other similar  
213 device or product.

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

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

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

223 (c) Product that contains incidental nicotine.

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

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

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

230 (8) "Self-service merchandising" means the open display of  
231 nicotine products, whether packaged or otherwise, for direct  
232 retail customer access and handling before purchase without the  
233 intervention or assistance of the retailer or the retailer's  
234 owner, employee, or agent. An open display of such products and  
235 devices includes the use of an open display unit.

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

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

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

242 (c) Is otherwise emancipated by a court of competent  
243 jurisdiction and released from parental care and responsibility;  
244 or

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

246 Section 12. Section 569.32, Florida Statutes, is created  
247 to read:

248 569.32 Retail nicotine products dealer permits;  
249 application; qualifications; renewal; duplicates.-

250 (1)(a) Each person, firm, association, or corporation that  
251 seeks to deal, at retail, in nicotine products within the state,  
252 or to allow a nicotine products vending machine to be located on  
253 its premises in the state, must obtain a retail nicotine  
254 products dealer permit for each place of business or the  
255 premises at which nicotine products are sold. Each dealer  
256 owning, leasing, furnishing, or operating vending machines  
257 through which nicotine products are sold must obtain a permit  
258 for each machine and shall post the permit in a conspicuous  
259 place on or near the machine; however, if the dealer has more  
260 than one vending machine at a single location or if nicotine  
261 products are sold both over the counter and through a vending

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262 machine at a single location, the dealer need obtain only one  
263 permit for that location.

264 (b) Application for a permit must be made on a form  
265 furnished by the division and must set forth the name under  
266 which the applicant transacts or intends to transact business,  
267 the address of the location of the applicant's place of business  
268 within the state, and any other information the division  
269 requires. If the applicant has or intends to have more than one  
270 place of business dealing in nicotine products within the state,  
271 a separate application must be made for each place of business.  
272 If the applicant is a firm or an association, the application  
273 must set forth the names and addresses of the persons  
274 constituting the firm or association; if the applicant is a  
275 corporation, the application must set forth the names and  
276 addresses of the principal officers of the corporation. The  
277 application must also set forth any other information prescribed  
278 by the division for the purpose of identifying the applicant  
279 firm, association, or corporation. The application must be  
280 signed and verified by oath or affirmation by the owner, if a  
281 sole proprietor, or, if the owner is a firm, association, or  
282 partnership, by the members or partners thereof, or, if the  
283 owner is a corporation, by an executive officer of the  
284 corporation or by any person authorized by the corporation to  
285 sign the application, together with the written evidence of this  
286 authority.

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

290 (b) The division may refuse to issue a permit to any  
291 person, firm, association, or corporation the permit of which  
292 has been revoked, to any corporation an officer of which has had  
293 his or her permit revoked, or to any person who is or has been  
294 an officer of a corporation the permit of which has been  
295 revoked. Any permit issued to a firm, association, or  
296 corporation prohibited from obtaining a permit under this  
297 chapter shall be revoked by the division.

298 (3) Upon approval of an application for a permit, the  
299 division shall issue to the applicant a permit for the place of  
300 business or premises specified in the application. A permit is  
301 not assignable and is valid only for the person in whose name  
302 the permit is issued and for the place designated in the permit.  
303 The permit shall be conspicuously displayed at all times at the  
304 place for which issued.

305 Section 13. Section 569.33 Florida Statutes, is created to  
306 read:

307 569.33 Consent to inspection and search without warrant.-  
308 An applicant for a retail nicotine products dealer permit, by  
309 accepting the permit when issued, agrees that the place or  
310 premises covered by the permit is subject to inspection and  
311 search without a search warrant by the division or its

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312 authorized assistants, and by sheriffs, deputy sheriffs, or  
313 police officers, to determine compliance with this part.

314 Section 14. Section 569.34, Florida Statutes, is created  
315 to read:

316 569.34 Operating without a retail nicotine products dealer  
317 permit; penalty.-

318 (1) It is unlawful for a person, firm, association, or  
319 corporation to deal, at retail, in nicotine products, in any  
320 manner, or to allow a nicotine products vending machine to be  
321 located on its premises, without having a retail nicotine  
322 product dealer permit as required by s. 569.32. A person who  
323 violates this section commits a noncriminal violation,  
324 punishable by a fine of not more than \$500.

325 (2) A retail tobacco products dealer, as defined in s.  
326 569.002, is not required to have a separate or additional retail  
327 nicotine products dealer permit to deal, at retail, nicotine  
328 products in the state, or allow a nicotine products vending  
329 machine to be located on its premises in the state. Any retail  
330 tobacco products dealer that deals, at retail, in nicotine  
331 products or allows a tobacco products vending machine to be  
332 located on its premises in the state, is subject to, and must be  
333 in compliance with, this part.

334 (3) Any person who violates this section shall be cited  
335 for such infraction and shall be cited to appear before the  
336 county court. The citation may indicate the time, date, and

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337 location of the scheduled hearing and must indicate that the  
338 penalty for a noncriminal violation is a fine of not more than  
339 \$500.

340 (a) A person cited for an infraction under this section  
341 may:

342 1. Post a \$500 bond; or

343 2. Sign and accept the citation indicating a promise to  
344 appear.

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

346 1. Pay the fine, either by mail or in person, within 10  
347 days after receiving the citation; or

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

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

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

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360 (e) If a person is found by the court to have committed  
361 the infraction, that person may appeal that finding to the  
362 circuit court.

363 Section 15. Section 569.35, Florida Statutes, is created  
364 to read:

365 569.35 Retail nicotine product dealers; administrative  
366 penalties.— The division may suspend or revoke the permit of a  
367 dealer, including the retail tobacco products dealer permit of a  
368 retail tobacco products dealer as defined in 569.002, upon  
369 sufficient cause appearing of the violation of any of the  
370 provisions of this part, by a dealer or by a dealer's agent or  
371 employee. The division may also assess and accept an  
372 administrative fine of up to \$1,000 against a dealer for each  
373 violation. The division shall deposit all fines collected into  
374 the General Revenue Fund as collected. An order imposing an  
375 administrative fine becomes effective 15 days after the date of  
376 the order. The division may suspend the imposition of a penalty  
377 against a dealer, conditioned upon the dealer's compliance with  
378 terms the division considers appropriate.

379 Section 16. Section 569.37, Florida Statutes, is created  
380 to read:

381 569.37 Sale or delivery of nicotine products;  
382 restrictions.—



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

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

388 (b) Sales from a vending machine are prohibited under  
389 paragraph (a) and are only permissible from a machine that is  
390 equipped with an operational lockout device that is under the  
391 control of the dealer or the dealer's agent or employee who  
392 directly regulates the sale of items through the machine by  
393 triggering the lockout device to allow the dispensing of one  
394 nicotine product. The lockout device must include a mechanism to  
395 prevent the machine from functioning if the power source for the  
396 lockout device fails or if the lockout device is disabled, and a  
397 mechanism to ensure that only one nicotine product is dispensed  
398 at a time.

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

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

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

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

411           Section 17. Section 569.38, Florida Statutes, is created  
412 to read:

413           569.38 Gift of sample nicotine products and nicotine  
414 dispensing devices.—The gift of sample nicotine products to any  
415 person under the age of 18 by an entity permitted under this  
416 chapter, or by an employee of such entity, is prohibited and is  
417 punishable as provided in s. 569.41.

418           Section 18. Section 569.381, Florida Statutes, is created  
419 to read:

420           569.381 Responsible retail nicotine products dealers;  
421 qualifications; mitigation of disciplinary penalties; diligent  
422 management and supervision; presumption.—

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

427           (2) To qualify as a responsible retail nicotine products  
428 dealer, the dealer must establish and implement procedures  
429 designed to ensure that the dealer's employees comply with this  
430 part. The dealer must provide a training program for the  
431 dealer's employees which addresses the use and sale of nicotine  
432 products and which includes at least the following topics:

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- 433        (a) Laws covering the sale of nicotine products.
- 434        (b) Methods of recognizing and handling customers under 18  
435 years of age.
- 436        (c) Procedures for proper examination of identification  
437 cards in order to verify that customers are not under 18 years  
438 of age.
- 439        (d) The use of the age audit identification function on  
440 electronic point-of-sale equipment, where available.
- 441        (3) In determining penalties under s. 569.35, the division  
442 may mitigate penalties imposed against a dealer because of an  
443 employee's illegal sale of a nicotine product to a person under  
444 18 years of age if the following conditions are met:
- 445        (a) The dealer is qualified as a responsible dealer under  
446 this section.
- 447        (b) The dealer provided the training program required  
448 under subsection (2) to that employee before the illegal sale  
449 occurred.
- 450        (c) The dealer had no knowledge of that employee's  
451 violation at the time of the violation and did not direct,  
452 approve, or participate in the violation.
- 453        (d) If the sale was made through a vending machine, the  
454 machine was equipped with an operational lock-out device.
- 455        (4) The division shall develop and make available a model  
456 nicotine products training program designed to ensure adherence

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457 to this chapter by dealers and their employees which, if  
458 followed, will qualify dealers as responsible dealers.

459 (5) Dealers shall exercise diligence in the management and  
460 supervision of their premises and in the supervision and  
461 training of their employees, agents, or servants. In proceedings  
462 to impose penalties under s. 569.35, proof that employees,  
463 agents, or servants of the dealer, while in the scope of their  
464 employment, committed at least three violations of s. 569.41  
465 during a 180-day period shall be prima facie evidence of a lack  
466 of due diligence by the dealer in the management and supervision  
467 of his or her premises and in the supervision and training of  
468 employees, agents, officers, or servants.

469 (6) The division may consider qualification as a  
470 responsible retail nicotine products dealer under this section  
471 as evidence that the dealer properly exercised the diligence  
472 required under this section.

473 Section 19. Section 569.39, Florida Statutes, is created  
474 to read:

475 569.39 Rulemaking authority.—The division shall adopt any  
476 rules necessary to administer and enforce the provisions of this  
477 part.

478 Section 20. Section 569.41, Florida Statutes, is created  
479 to read:

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480 569.41 Selling, delivering, bartering, furnishing, or  
481 giving nicotine products to persons under 18 years of age;  
482 criminal penalties; defense.-

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

486 (2) Any person who violates subsection (1) commits a  
487 misdemeanor of the second degree, punishable as provided in s.  
488 775.082 or s. 775.083. However, any person who violates  
489 subsection (1) for a second or subsequent time within 1 year  
490 after the first violation commits a misdemeanor of the first  
491 degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

500 (c) Such person carefully checked a driver license or an  
501 identification card issued by the state or another state of the  
502 United States, a passport, or a United States armed services  
503 identification card presented by the buyer or recipient and  
504 acted in good faith and in reliance upon the representation and

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505 appearance of the buyer or recipient in the belief that the  
506 buyer or recipient was 18 years of age or older.

507 Section 21. Section 569.42, Florida Statutes, is created  
508 to read:

509 569.42 Possession, misrepresenting age or military service  
510 to purchase, and purchase of nicotine products by persons under  
511 18 years of age prohibited; penalties; jurisdiction; disposition  
512 of fines.—

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

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

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

523  
524 Any second or subsequent violation not within the 12-week period  
525 after the first violation is punishable as provided for a first  
526 violation.

527 (2) It is unlawful for any person under 18 years of age to  
528 misrepresent his or her age or military service for the purpose  
529 of inducing a dealer or an agent or employee of the dealer to

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530 sell, give, barter, furnish, or deliver any nicotine product, or  
531 to purchase, or attempt to purchase, any nicotine product from a  
532 person or a vending machine. Any person under 18 years of age  
533 who violates this subsection commits a noncriminal violation as  
534 provided in s. 775.08(3), punishable by:

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

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

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

545 (3) Any person under 18 years of age cited for committing  
546 a noncriminal violation under this section must sign and accept  
547 a civil citation indicating a promise to appear before the  
548 county court or comply with the requirement for paying the fine  
549 and must attend a school-approved anti-tobacco and anti-nicotine  
550 program, if locally available. If a fine is assessed for a  
551 violation of this section, the fine must be paid within 30 days  
552 after the date of the citation or, if a court appearance is  
553 mandatory, within 30 days after the date of the hearing.

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554       (4) A person charged with a noncriminal violation under  
555 this section must appear before the county court or comply with  
556 the requirement for paying the fine. The court, after a hearing,  
557 shall make a determination as to whether the noncriminal  
558 violation was committed. If the court finds the violation was  
559 committed, it shall impose an appropriate penalty as specified  
560 in subsection (1) or subsection (2). A person who participates  
561 in community service shall be considered an employee of the  
562 state for the purpose of chapter 440, for the duration of such  
563 service.

564       (5) (a) If a person under 18 years of age is found by the  
565 court to have committed a noncriminal violation under this  
566 section and that person has failed to complete community  
567 service, pay the fine as required by paragraph (1) (a) or  
568 paragraph (2) (a), or attend a school-approved anti-tobacco and  
569 anti-nicotine program, if locally available, the court may  
570 direct the Department of Highway Safety and Motor Vehicles to  
571 withhold issuance of or suspend the driver license or driving  
572 privilege of that person for a period of 30 consecutive days.

573       (b) If a person under 18 years of age is found by the  
574 court to have committed a noncriminal violation under this  
575 section and that person has failed to pay the applicable fine as  
576 required by paragraph (1) (b) or paragraph (2) (b), the court may  
577 direct the Department of Highway Safety and Motor Vehicles to



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578 withhold issuance of or suspend the driver license or driving  
579 privilege of that person for a period of 45 consecutive days.

580 (6) Eighty percent of all civil penalties received by a  
581 county court under this section shall be remitted by the clerk  
582 of the court to the Department of Revenue for transfer to the  
583 Department of Education to provide for teacher training and for  
584 research and evaluation to reduce and prevent the use of  
585 nicotine products by children. The remaining 20 percent of civil  
586 penalties received by a county court under this section shall  
587 remain with the clerk of the county court to cover  
588 administrative costs.

589 Section 22. Section 569.43, Florida Statutes, is created  
590 to read:

591 569.43 Posting a sign stating that the sale of nicotine  
592 products to persons under 18 years of age is unlawful;  
593 enforcement; penalty.-

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

597  
598 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO  
599 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE  
600 IS REQUIRED FOR PURCHASE.

601

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602       (2) The division shall make available to dealers of  
603 nicotine products signs that meet the requirements of subsection  
604 (1).

605       (3) Any dealer that sells nicotine products shall provide  
606 at the checkout counter in a location clearly visible to the  
607 dealer or the dealer's agent or employee instructional material  
608 in a calendar format or similar format to assist in determining  
609 whether a person is of legal age to purchase nicotine products.  
610 This point of sale material must contain substantially the  
611 following language:

612  
613                   IF YOU WERE NOT BORN BEFORE THIS DATE

614                   (insert date and applicable year)

615       YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
616                   DISPENSING DEVICES.

617  
618 Upon approval by the division, in lieu of a calendar a dealer  
619 may use card readers, scanners, or other electronic or automated  
620 systems that can verify whether a person is of legal age to  
621 purchase nicotine products. Failure to comply with the  
622 provisions contained in this subsection shall result in  
623 imposition of administrative penalties as provided in s. 569.35.

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

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

629 Section 23. Section 569.44, Florida Statutes, is created  
630 to read:

631 569.44 Annual report.—The division shall report annually  
632 with written findings to the Legislature and the Governor by  
633 December 31, on the progress of implementing the enforcement  
634 provisions of this part. This must include, but is not limited  
635 to:

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

637 (2) The number of violations for failure of a retailer to  
638 hold a valid permit.

639 (3) The number of violations for selling nicotine products  
640 to persons under age 18, and the results of administrative  
641 hearings on the above and related issues.

642 (4) The number of persons under age 18 cited for  
643 violations of s. 569.42 and sanctions imposed as a result of  
644 citation.

645 Section 24. Section 569.45, Florida Statutes, is created  
646 to read:

647 569.45 Mail order, Internet, and remote sales of nicotine  
648 products; age verification.—

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

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650 (a) "Adult" means an individual who is at least of the  
651 legal minimum purchase age for nicotine products.

652 (b) "Consumer" means a person in the state who comes into  
653 possession of any nicotine product who, at the time of  
654 possession, is not intending to sell or distribute the nicotine  
655 product, or is a retailer.

656 (c) "Delivery sale" means any sale of nicotine products to  
657 a consumer in the state for which:

658 1. The consumer submits the order for the sale by  
659 telephonic or other voice transmission, mail, delivery service,  
660 or the Internet or other online service; or

661 2. The nicotine products are delivered by use of mail or a  
662 delivery service.

663 (d) "Delivery service" means any person engaged in the  
664 commercial delivery of letters, packages, or other containers.

665 (e) "Legal minimum purchase age" means the minimum age at  
666 which an individual may legally purchase nicotine products in  
667 the state.

668 (f) "Retailer" means any person who is required to obtain  
669 a retail nicotine products dealer permit or a retail tobacco  
670 products dealer permit, as defined in s. 569.002.

671 (g) "Shipping container" means a container in which  
672 nicotine products are shipped in connection with a delivery  
673 sale.

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674 (h) "Shipping document" means a bill of lading, airbill,  
675 United States Postal Service form, or any other document used to  
676 verify the undertaking by a delivery service to deliver letters,  
677 packages, or other containers.

678 (2) (a) A sale of nicotine products constituting a delivery  
679 sale under paragraph (1) (c) is a delivery sale regardless of  
680 whether the person accepting the order for the delivery sale is  
681 located inside or outside the state.

682 (b) A retailer must obtain a retail nicotine products  
683 dealer permit or a retail tobacco products dealer permit, as  
684 defined in 569.002, from the division under the requirements of  
685 this chapter before accepting an order for a delivery sale.

686 (c) A person may not make a delivery sale of nicotine  
687 products to any individual who is not an adult.

688 (d) Each person accepting an order for a delivery sale  
689 must comply with each of the following:

690 1. The age verification requirements set forth in  
691 subsection (3).

692 2. The disclosure requirements set forth in subsection  
693 (4).

694 3. The shipping requirements set forth in subsection (5).

695 (3) A person may not mail, ship, or otherwise deliver  
696 nicotine products in connection with an order for a delivery  
697 sale unless, before the first delivery to the consumer, the  
698 person accepting the order for the delivery sale:

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699       (a) Obtains from the person submitting the order a  
700 certification that includes:  
701       1. Reliable confirmation that the person is an adult; and  
702       2. A statement signed by the person in writing and under  
703 penalty of perjury which:  
704       a. Certifies the address and date of birth of the person;  
705 and  
706       b. Confirms that the person wants to receive delivery  
707 sales from a nicotine products company and understands that,  
708 under the laws of the state, the following actions are illegal:  
709       (I) Signing another person's name to the certification;  
710       (II) Selling nicotine products to individuals who are not  
711 adults; and  
712       (III) Purchasing nicotine products, if the person making  
713 the purchase is not an adult.  
714       (b) Makes a good faith effort to verify the information  
715 contained in the certification provided by the individual under  
716 paragraph (a) against a commercially available database that may  
717 be reasonably relied upon for accurate age information or  
718 obtains a photocopy or other image of a valid government-issued  
719 identification card stating the date of birth or age of the  
720 individual.  
721       (c) Provides to the individual, via electronic mail or  
722 other means, a notice meeting the requirements of subsection  
723 (4).

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724 (d) If an order for nicotine products is made pursuant to  
725 an advertisement on the Internet, receives payment for the  
726 delivery sale from the consumer by a credit or debit card issued  
727 in the name of the consumer, or by personal or company check of  
728 the consumer.

729 (e) The person accepting the order for delivery sale shall  
730 submit, to each credit card acquiring company with which the  
731 person has credit card sales, identification information in an  
732 appropriate form and format so that the words "nicotine product"  
733 may be printed in the purchaser's credit card statement when a  
734 purchase of a nicotine product is made by credit card payment.

735 (f) Makes a telephone call after 5 p.m. to the purchaser  
736 confirming the order before shipping the nicotine products. The  
737 telephone call may be a person-to-person call or a recorded  
738 message. The person accepting the order for delivery sale is not  
739 required to speak directly with a person and may leave a message  
740 on an answering machine or through voice mail.

741  
742 In addition to the requirements of this subsection, a person  
743 accepting an order for a delivery sale may request that a  
744 consumer provide an electronic mail address.

745 (4) The notice described in paragraph (3)(c) must include  
746 prominent and clearly legible statements that sales of nicotine  
747 products are:

748 (a) Illegal if made to individuals who are not adults.

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749 (b) Restricted to those individuals who provide verifiable  
750 proof of age in accordance with subsection (3).

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

754 (a) Include as part of the shipping documents, in a clear  
755 and conspicuous manner, the following statement: "Nicotine  
756 Products: Florida law prohibits shipping to individuals under 18  
757 years of age."

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

760 1. The individual submitting the order for the delivery  
761 sale or another adult who resides at the individual's address to  
762 sign his or her name to accept delivery of the shipping  
763 container. Proof of the legal minimum purchase age of the  
764 individual accepting delivery is required only if the individual  
765 appears to be under 27 years of age.

766 2. Proof that the individual is either the addressee or  
767 the adult designated by the addressee, in the form of a valid,  
768 government-issued identification card bearing a photograph of  
769 the individual who signs to accept delivery of the shipping  
770 container.

771  
772 If the person accepting a purchase order for a delivery sale  
773 delivers the nicotine products without using a delivery service,



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774 the person must comply with all of the requirements of this  
775 section which apply to a delivery service. Any failure to comply  
776 with a requirement of this section constitutes a violation  
777 thereof.

778 (6) This section does not apply to delivery sales of  
779 nicotine products to a retail nicotine products dealer or a  
780 retail tobacco products dealer, as defined in s. 569.002.

781 (7) An adult who knowingly violates any provision of this  
782 section commits a misdemeanor of the second degree, punishable  
783 as provided in s. 775.082 or s. 775.083.

784 (8) The Attorney General, the Attorney General's designee,  
785 or a state attorney may bring an action in the appropriate court  
786 in the state to prevent or restrain violations of this section  
787 by any person.

788 Section 25. Subsection (1) of section 768.73, Florida  
789 Statutes, is amended to read:

790 768.73 Punitive damages; limitation.—

791 (1) (a) Except as provided in paragraphs (b), and (c), and  
792 (d), an award of punitive damages may not exceed the greater of:

793 1. Three times the amount of compensatory damages awarded  
794 to each claimant entitled thereto, consistent with the remaining  
795 provisions of this section; or

796 2. The sum of \$500,000.

797 (b) Where the fact finder determines that the wrongful  
798 conduct proven under this section was motivated solely by

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799 unreasonable financial gain and determines that the unreasonably  
800 dangerous nature of the conduct, together with the high  
801 likelihood of injury resulting from the conduct, was actually  
802 known by the managing agent, director, officer, or other person  
803 responsible for making policy decisions on behalf of the  
804 defendant, it may award an amount of punitive damages not to  
805 exceed the greater of:

806 1. Four times the amount of compensatory damages awarded  
807 to each claimant entitled thereto, consistent with the remaining  
808 provisions of this section; or

809 2. The sum of \$2 million.

810 (c) Where the fact finder determines that the wrongful  
811 conduct proven under this section was committed by a  
812 manufacturer of a vapor-generating electronic device as defined  
813 in s. 386.203, or a manufacturer of a nicotine product or  
814 nicotine dispensing device as defined in s. 569.31, it may award  
815 against such manufacturer an amount of punitive damages not to  
816 exceed the greater of:

817 1. Four times the amount of compensatory damages awarded  
818 to each claimant entitled thereto, consistent with the remaining  
819 provisions of this section; or

820 2. The sum of \$2 million.

821 (d)(c) Where the fact finder determines that at the time  
822 of injury the defendant had a specific intent to harm the

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823 claimant and determines that the defendant's conduct did in fact  
824 harm the claimant, there shall be no cap on punitive damages.

825 (e)(d) This subsection is not intended to prohibit an  
826 appropriate court from exercising its jurisdiction under s.  
827 768.74 in determining the reasonableness of an award of punitive  
828 damages that is less than three times the amount of compensatory  
829 damages.

830 Section 26. Section 877.112, Florida Statutes, is  
831 repealed.

832 Section 27. This act shall take effect October 1, 2020.  
833

834 -----

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

836 Remove everything before the enacting clause and insert:  
837 An act relating to nicotine products; revising the  
838 title of ch. 569, F.S.; renaming ch. 569, F.S.;  
839 providing directives to the Division of Law Revision;  
840 amending s. 569.002, F.S.; providing definitions for  
841 "nicotine products" and "nicotine dispensing devices";  
842 amending ss. 569.004, 569.006, and 569.009 F.S.;  
843 conforming provisions to changes made by the act;  
844 amending s. 569.0073, F.S.; revising an exception to a  
845 prohibition of the offer for sale at retail of  
846 specified items; amending s. 569.12, F.S.; expanding  
847 authority of tobacco product enforcement officers to

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848 include nicotine products; amending s. 569.14, F.S.;

849 revising requirements for certain signage; amending s.

850 569.19, F.S.; conforming a provision to changes made

851 by the act; creating s. 569.31, F.S.; providing

852 definitions; creating s. 569.32, F.S.; requiring

853 retailers of nicotine products to have a permit;

854 providing requirements for such permit; creating s.

855 569.33, F.S.; providing for consent to inspection and

856 search; creating s. 569.34, F.S.; prohibiting certain

857 persons, firms, associations, or corporations from

858 operating without a permit; providing a penalty;

859 creating s. 569.35, F.S.; providing administrative

860 penalties for retail nicotine product dealers under

861 certain circumstances; creating s. 569.37, F.S.;

862 providing restrictions of the sale or delivery of

863 nicotine products; creating s. 569.38, F.S.;

864 prohibiting giving nicotine product samples to certain

865 persons; creating s. 569.381, F.S.; providing

866 legislative intent, qualifications for responsible

867 retail nicotine product dealers, and mitigation of

868 disciplinary penalties; creating s. 569.39, F.S.;

869 providing rulemaking authority; creating ss. 569.41

870 and 569.42, F.S.; providing civil and criminal

871 penalties; creating s. 569.43, F.S.; providing signage

872 requirements; creating s. 569.44, F.S.; requiring an

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7089 (2020)

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873 | annual report; creating s. 569.45, F.S.; providing  
874 | requirements for remote sales of nicotine products;  
875 | providing a criminal penalty for knowingly violating  
876 | such requirements; amending s. 768.73, F.S.; revising  
877 | punitive damages; repealing s. 877.112, F.S., relating  
878 | to nicotine products and nicotine dispensing devices;  
879 | providing an effective date.