

1 A bill to be entitled

2 An act relating to nicotine products; revising the
3 title of ch. 569, F.S.; renaming ch. 569, F.S.;
4 providing directives to the Division of Law Revision;
5 amending s. 569.002, F.S.; providing definitions for
6 "nicotine products" and "nicotine dispensing devices";
7 amending ss. 569.004, 569.006, and 569.009 F.S.;
8 conforming provisions to changes made by the act;
9 amending s. 569.0073, F.S.; revising an exception to a
10 prohibition of the offer for sale at retail of
11 specified items; amending s. 569.12, F.S.; expanding
12 authority of tobacco product enforcement officers to
13 include nicotine products; amending s. 569.14, F.S.;
14 revising requirements for certain signage; amending s.
15 569.19, F.S.; conforming a provision to changes made
16 by the act; creating s. 569.31, F.S.; providing
17 definitions; creating s. 569.32, F.S.; requiring
18 retailers of nicotine products to have a permit;
19 providing requirements for such permit; creating s.
20 569.33, F.S.; providing for consent to inspection and
21 search; creating s. 569.34, F.S.; prohibiting certain
22 persons, firms, associations, or corporations from
23 operating without a permit; providing a penalty;
24 creating s. 569.35, F.S.; providing administrative
25 penalties for retail nicotine product dealers under

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

27 providing restrictions of the sale or delivery of

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

29 prohibiting giving nicotine product samples to certain

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

31 legislative intent, qualifications for responsible

32 retail nicotine product dealers, and mitigation of

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

34 providing rulemaking authority; creating ss. 569.41

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

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

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

38 annual report; creating s. 569.45, F.S.; providing

39 requirements for remote sales of nicotine products;

40 providing a criminal penalty for knowingly violating

41 such requirements; amending s. 768.73, F.S.; revising

42 punitive damages; repealing s. 877.112, F.S., relating

43 to nicotine products and nicotine dispensing devices;

44 providing an effective date.

45

46 Be It Enacted by the Legislature of the State of Florida:

47

48 Section 1. Chapter 569, entitled "Tobacco Products," is

49 renamed "Tobacco and Nicotine Products."

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

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

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

57 Section 3. Section 569.002, Florida Statutes, is amended
58 to read:

59 569.002 Definitions.—As used in this part ~~chapter~~, the
60 term:

61 (1)~~(7)~~ "Any person under the age of 18" does not include
62 any person under the age of 18 who:

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

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

67 (c) Is otherwise emancipated by a court of competent
68 jurisdiction and released from parental care and responsibility;
69 or

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

73 (2)~~(1)~~ "Dealer" is synonymous with the term "retail
74 tobacco products dealer."

75 (3)~~(2)~~ "Division" means the Division of Alcoholic

76 Beverages and Tobacco of the Department of Business and
 77 Professional Regulation.

78 (4) "Nicotine product" has the same meaning as provided in
 79 s. 569.31.

80 (5)~~(3)~~ "Permit" is synonymous with the term "retail
 81 tobacco products dealer permit."

82 (6)~~(4)~~ "Retail tobacco products dealer" means the holder
 83 of a retail tobacco products dealer permit.

84 (7)~~(5)~~ "Retail tobacco products dealer permit" means a
 85 permit issued by the division pursuant to s. 569.003.

86 (8)~~(6)~~ "Tobacco products" includes loose tobacco leaves,
 87 and products made from tobacco leaves, in whole or in part, and
 88 cigarette wrappers, which can be used for smoking, sniffing, or
 89 chewing.

90 Section 4. Section 569.004, Florida Statutes, is amended
 91 to read:

92 569.004 Consent to inspection and search without warrant.—
 93 An applicant for a permit, by accepting the permit when issued,
 94 agrees that the place or premises covered by the permit is
 95 subject to inspection and search without a search warrant by the
 96 division or its authorized assistants, and by sheriffs, deputy
 97 sheriffs, or police officers, to determine compliance with this
 98 chapter, including part II of this chapter if the applicant
 99 deals, at retail, nicotine products within the state or allows a
 100 nicotine products vending machine to be located on its premises

101 within the state.

102 Section 5. Section 569.006, Florida Statutes, is amended
103 to read:

104 569.006 Retail tobacco products dealers; administrative
105 penalties.—The division may suspend or revoke the permit of the
106 dealer upon sufficient cause appearing of the violation of any
107 of the provisions of this chapter, including part II of this
108 chapter if the dealer deals, at retail, nicotine products within
109 the state or allows a nicotine products vending machine to be
110 located on its premises within the state, by a dealer or by a
111 dealer's agent or employee. The division may also assess and
112 accept administrative fines of up to \$1,000 against a dealer for
113 each violation. The division shall deposit all fines collected
114 into the General Revenue Fund as collected. An order imposing an
115 administrative fine becomes effective 15 days after the date of
116 the order. The division may suspend the imposition of a penalty
117 against a dealer, conditioned upon the dealer's compliance with
118 terms the division considers appropriate.

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

121 569.0073 Special provisions; smoking pipes and smoking
122 devices.—

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

126 (a) Has a retail tobacco products dealer permit under s.
 127 569.003. The provisions of this chapter apply to any person that
 128 offers for retail sale any of the items listed in subsection
 129 (2); and

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

133 2. Derives no more than 25 percent of its annual gross
 134 revenues from the retail sale of the items listed in subsection
 135 (2).

136 Section 7. Section 569.009, Florida Statutes, is amended
 137 to read:

138 569.009 Rulemaking authority.—The division shall adopt any
 139 rules necessary to administer and enforce the provisions of this
 140 part ~~chapter~~.

141 Section 8. Section 569.12, Florida Statutes, is amended to
 142 read:

143 569.12 Jurisdiction; tobacco product and nicotine product
 144 enforcement officers or agents; enforcement.—

145 (1) In addition to the Division of Alcoholic Beverages and
 146 Tobacco of the Department of Business and Professional
 147 Regulation, any law enforcement officer certified under s.
 148 943.10(1), (6), or (8) shall enforce the provisions of this
 149 chapter.

150 (2) (a) A county or municipality may designate certain of

151 its employees or agents as tobacco product and nicotine product
 152 enforcement officers. The training and qualifications of the
 153 employees or agents for such designation shall be determined by
 154 the county or the municipality. Nothing in this section shall be
 155 construed to permit the carrying of firearms or other weapons by
 156 a tobacco product and nicotine product enforcement agent, nor
 157 does designation as a tobacco product and nicotine product
 158 enforcement officer provide the employee or agent with the power
 159 of arrest or subject the employee or agent to the provisions of
 160 ss. 943.085-943.255. Nothing in this section amends, alters, or
 161 contravenes the provisions of any state-administered retirement
 162 system or any state-supported retirement system established by
 163 general law.

164 (b) An ~~A tobacco product~~ enforcement officer is authorized
 165 to issue a citation to a person under the age of 18 when, based
 166 upon personal investigation, the officer has reasonable cause to
 167 believe that the person has committed a civil infraction in
 168 violation of s. 386.212, ~~or~~ s. 569.11, or s. 569.42.

169 (3) A correctional probation officer as defined in s.
 170 943.10(3) is authorized to issue a citation to a person under
 171 the age of 18 when, based upon personal investigation, the
 172 officer has reasonable cause to believe that the person has
 173 committed a civil infraction in violation of s. 569.11 or s.
 174 569.42.

175 (4) A citation issued to any person violating the

176 provisions of s. 569.11 or s. 569.42 shall be in a form
 177 prescribed by the Division of Alcoholic Beverages and Tobacco of
 178 the Department of Business and Professional Regulation and shall
 179 contain:

- 180 (a) The date and time of issuance.
- 181 (b) The name and address of the person to whom the
 182 citation is issued.
- 183 (c) The date and time the civil infraction was committed.
- 184 (d) The facts constituting reasonable cause.
- 185 (e) The number of the Florida statute violated.
- 186 (f) The name and authority of the citing officer.
- 187 (g) The procedure for the person to follow in order to
 188 contest the citation, perform the required community service,
 189 attend the required anti-tobacco or anti-tobacco and anti-
 190 nicotine program, or to pay the civil penalty.

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

193 569.14 Posting of a sign stating that the sale of tobacco
 194 products or nicotine products to persons under 18 years of age
 195 is unlawful; enforcement; penalty.—

196 (2) A dealer that sells tobacco products and nicotine
 197 products ~~or nicotine dispensing devices, as defined in s.~~
 198 ~~877.112,~~ may use a sign that substantially states the following:

199
 200 THE SALE OF TOBACCO PRODUCTS OR, NICOTINE PRODUCTS, ~~OR NICOTINE~~

201 ~~DISPENSING DEVICES~~ TO PERSONS UNDER THE AGE OF 18 IS AGAINST
 202 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

203
 204 A dealer that uses a sign as described in this subsection meets
 205 the signage requirements of subsection (1) and s. 569.43(1) ~~s.~~
 206 ~~877.112~~.

207 (4) Any dealer that sells tobacco products shall provide
 208 at the checkout counter in a location clearly visible to the
 209 dealer or the dealer's agent or employee instructional material
 210 in a calendar format or similar format to assist in determining
 211 whether a person is of legal age to purchase tobacco products.
 212 This point of sale material must contain substantially the
 213 following language:

214 IF YOU WERE NOT BORN BEFORE THIS DATE

215 (insert date and applicable year)

216 YOU CANNOT BUY TOBACCO PRODUCTS OR NICOTINE PRODUCTS.

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

223 Section 10. Section 569.19, Florida Statutes, is amended
 224 to read:

225 569.19 Annual report.—The division shall report annually

226 with written findings to the Legislature and the Governor by
 227 December 31, on the progress of implementing the enforcement
 228 provisions of this part ~~chapter~~. This must include, but is not
 229 limited to:

- 230 (1) The number and results of compliance visits.
- 231 (2) The number of violations for failure of a retailer to
 232 hold a valid license.
- 233 (3) The number of violations for selling tobacco products
 234 to persons under age 18, and the results of administrative
 235 hearings on the above and related issues.
- 236 (4) The number of persons under age 18 cited for
 237 violations of s. 569.11 and sanctions imposed as a result of
 238 citation.

239 Section 11. Section 569.31, Florida Statutes, is created
 240 to read:

241 569.31 Definitions.—As used in this part, the term:

242 (1) "A person under the age of 18" does not include a
 243 person under 18 years of age who:

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

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

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

250 or

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

252 (2) "Dealer" is synonymous with the term "retail nicotine
253 products dealer."

254 (3) "Division" means the Division of Alcoholic Beverages
255 and Tobacco of the Department of Business and Professional
256 Regulation.

257 (4) "Nicotine dispensing device" means any product that
258 employs an electronic, chemical, or mechanical means to produce
259 vapor or aerosol from a nicotine product, including, but not
260 limited to, an electronic cigarette, electronic cigar,
261 electronic cigarillo, electronic pipe, or other similar device
262 or product, any replacement cartridge for such device, and any
263 other container of nicotine in a solution or other form intended
264 to be used with or within an electronic cigarette, electronic
265 cigar, electronic cigarillo, electronic pipe, or other similar
266 device or product.

267 (5) "Nicotine product" means any product that contains
268 nicotine, including liquid nicotine, which is intended for human
269 consumption, whether inhaled, chewed, absorbed, dissolved, or
270 ingested by any means. The term also includes any nicotine
271 dispensing device. The term does not include a:

272 1. Tobacco product, as defined in s. 569.002;

273 2. Product regulated as a drug or device by the United
274 States Food and Drug Administration under Chapter V of the
275 Federal Food, Drug, and Cosmetic Act; or

276 3. Product that contains incidental nicotine.

277 (6) "Permit" is synonymous with the term "retail nicotine
 278 products dealer permit."

279 (5) "Retail nicotine products dealer" means the holder of
 280 a retail nicotine products dealer permit.

281 (6) "Retail nicotine products dealer permit" means a
 282 permit issued by the division under s. 569.32.

283 (7) "Self-service merchandising" means the open display of
 284 nicotine products, whether packaged or otherwise, for direct
 285 retail customer access and handling before purchase without the
 286 intervention or assistance of the retailer or the retailer's
 287 owner, employee, or agent. An open display of such products and

288 Section 12. Section 569.32, Florida Statutes, is created
 289 to read:

290 569.32 Retail nicotine products dealer permits;
 291 application; qualifications; renewal; duplicates.—

292 (1)(a) Each person, firm, association, or corporation that
 293 seeks to deal, at retail, in nicotine products within the state,
 294 or to allow a nicotine products vending machine to be located on
 295 its premises in the state, must obtain a retail nicotine
 296 products dealer permit for each place of business or its
 297 premises at which nicotine products are sold. Each dealer
 298 owning, leasing, furnishing, or operating vending machines
 299 through which nicotine products are sold must obtain a permit
 300 for each machine and shall post the permit in a conspicuous

301 place on or near the machine; however, if the dealer has more
302 than one vending machine at a single location or if nicotine
303 products are sold both over the counter and through a vending
304 machine at a single location, the dealer need obtain only one
305 permit for that location.

306 (b) Application for a permit must be made on a form
307 furnished by the division and must set forth the name under
308 which the applicant transacts or intends to transact business,
309 the address of the location of the applicant's place of business
310 within the state, and any other information the division
311 requires. If the applicant has or intends to have more than one
312 place of business dealing in nicotine products within the state,
313 a separate application must be made for each place of business.
314 If the applicant is a firm or an association, the application
315 must set forth the names and addresses of the persons
316 constituting the firm or association; if the applicant is a
317 corporation, the application must set forth the names and
318 addresses of the principal officers of the corporation. The
319 application must also set forth any other information prescribed
320 by the division for the purpose of identifying the applicant
321 firm, association, or corporation. The application must be
322 signed and verified by oath or affirmation by the owner, if a
323 sole proprietor, or, if the owner is a firm, association, or
324 partnership, by the members or partners thereof, or, if the
325 owner is a corporation, by an executive officer of the

326 corporation or by any person authorized by the corporation to
327 sign the application, together with the written evidence of this
328 authority.

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

332 (b) The division may refuse to issue a permit to any
333 person, firm, association, or corporation the permit of which
334 has been revoked, to any corporation an officer of which has had
335 his or her permit revoked, or to any person who is or has been
336 an officer of a corporation the permit of which has been
337 revoked. Any permit issued to a firm, association, or
338 corporation prohibited from obtaining a permit under this
339 chapter shall be revoked by the division.

340 (3) Upon approval of an application for a permit, the
341 division shall issue to the applicant a permit for the place of
342 business or premises specified in the application. A permit is
343 not assignable and is valid only for the person in whose name
344 the permit is issued and for the place designated in the permit.
345 The permit shall be conspicuously displayed at all times at the
346 place for which issued.

347 Section 13. Section 569.33 Florida Statutes, is created to
348 read:

349 569.33 Consent to inspection and search without warrant.-
350 An applicant for a retail nicotine products dealer permit, by

351 accepting the permit when issued, agrees that the place or
352 premises covered by the permit is subject to inspection and
353 search without a search warrant by the division or its
354 authorized assistants, and by sheriffs, deputy sheriffs, or
355 police officers, to determine compliance with this part.

356 Section 14. Section 569.34, Florida Statutes, is created
357 to read:

358 569.34 Operating without a retail nicotine products dealer
359 permit; penalty.—

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

367 (2) A retail tobacco products dealer, as defined in s.
368 569.002, is not required to have a separate or additional retail
369 nicotine products dealer permit to deal, at retail, nicotine
370 products in the state, or allow a nicotine products vending
371 machine to be located on its premises in the state. Any retail
372 tobacco products dealer that deals, at retail, in nicotine
373 products or allows a tobacco products vending machine to be
374 located on its premises in the state, is subject to, and must be
375 in compliance with, this part.

376 (3) A person who violates this section shall be cited for
377 such infraction and shall be cited to appear before the county
378 court. The citation may indicate the time, date, and location of
379 the scheduled hearing and must indicate that the penalty for a
380 noncriminal violation is a fine of not more than \$500.

381 (a) A person cited for an infraction under this section
382 may:

383 1. Post a \$500 bond; or

384 2. Sign and accept the citation indicating a promise to
385 appear.

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

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

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

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

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

401 (e) If a person is found by the court to have committed
402 the infraction, that person may appeal that finding to the
403 circuit court.

404 Section 15. Section 569.35, Florida Statutes, is created
405 to read:

406 569.35 Retail nicotine product dealers; administrative
407 penalties.— The division may suspend or revoke the permit of a
408 dealer, including the retail tobacco products dealer permit of a
409 retail tobacco products dealer as defined in 569.002, upon
410 sufficient cause appearing of the violation of any of the
411 provisions of this part, by a dealer or by a dealer's agent or
412 employee. The division may also assess and accept an
413 administrative fine of up to \$1,000 against a dealer for each
414 violation. The division shall deposit all fines collected into
415 the General Revenue Fund as collected. An order imposing an
416 administrative fine becomes effective 15 days after the date of
417 the order. The division may suspend the imposition of a penalty
418 against a dealer, conditioned upon the dealer's compliance with
419 terms the division considers appropriate.

420 Section 16. Section 569.37, Florida Statutes, is created
421 to read:

422 569.37 Sale or delivery of nicotine products;
423 restrictions.—

424 (1) In order to prevent persons under 18 years of age from
425 purchasing or receiving nicotine products, the sale or delivery

426 of nicotine products is prohibited, except:

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

429 (b) Sales from a vending machine are prohibited under
430 paragraph (a) and are only permissible from a machine that is
431 equipped with an operational lockout device that is under the
432 control of the dealer or the dealer's agent or employee who
433 directly regulates the sale of items through the machine by
434 triggering the lockout device to allow the dispensing of one
435 nicotine product. The lockout device must include a mechanism to
436 prevent the machine from functioning if the power source for the
437 lockout device fails or if the lockout device is disabled, and a
438 mechanism to ensure that only one nicotine product is dispensed
439 at a time.

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

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

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

449 (4) A dealer or a dealer's agent or employee may require
450 proof of age of a purchaser of a nicotine product before selling

451 the product or device to that person.

452 Section 17. Section 569.38, Florida Statutes, is created
453 to read:

454 569.38 Gift of sample nicotine products and nicotine
455 dispensing devices.—The gift of sample nicotine products to
456 persons under 18 years of age by an entity permitted under this
457 chapter, or by an employee of such entity, is prohibited and is
458 punishable as provided in s. 569.41.

459 Section 18. Section 569.381, Florida Statutes, is created
460 to read:

461 569.381 Responsible retail nicotine products dealers;
462 qualifications; mitigation of disciplinary penalties; diligent
463 management and supervision; presumption.—

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

468 (2) To qualify as a responsible retail nicotine products
469 dealer, the dealer must establish and implement procedures
470 designed to ensure that the dealer's employees comply with this
471 part. The dealer must provide a training program for the
472 dealer's employees which addresses the use and sale of nicotine
473 products and which includes at least the following topics:

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

475 (b) Methods of recognizing and handling customers under 18

476 years of age.

477 (c) Procedures for proper examination of identification
478 cards in order to verify that customers are not under 18 years
479 of age.

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

482 (3) In determining penalties under s. 569.35, the division
483 may mitigate penalties imposed against a dealer because of an
484 employee's illegal sale of a nicotine product to persons under
485 18 years of age if the following conditions are met:

486 (a) The dealer is qualified as a responsible dealer under
487 this section.

488 (b) The dealer provided the training program required
489 under subsection (2) to that employee before the illegal sale
490 occurred.

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

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

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

500 (5) Dealers shall exercise diligence in the management and

501 supervision of their premises and in the supervision and
502 training of their employees, agents, or servants. In proceedings
503 to impose penalties under s. 569.35, proof that employees,
504 agents, or servants of the dealer, while in the scope of their
505 employment, committed at least three violations of s. 569.41
506 during a 180-day period shall be prima facie evidence of a lack
507 of due diligence by the dealer in the management and supervision
508 of his or her premises and in the supervision and training of
509 employees, agents, officers, or servants.

510 (6) The division may consider qualification as a
511 responsible retail nicotine products dealer under this section
512 as evidence that the dealer properly exercised the diligence
513 required under this section.

514 Section 19. Section 569.39, Florida Statutes, is created
515 to read:

516 569.39 Rulemaking authority.—The division shall adopt any
517 rules necessary to administer and enforce the provisions of this
518 part.

519 Section 20. Section 569.41, Florida Statutes, is created
520 to read:

521 569.41 Selling, delivering, bartering, furnishing, or
522 giving nicotine products to persons under 18 years of age;
523 criminal penalties; defense.—

524 (1) It is unlawful to sell, deliver, barter, furnish, or
525 give, directly or indirectly, to persons under 18 years of age,

526 any nicotine product.

527 (2) Any person who violates subsection (1) commits a
528 misdemeanor of the second degree, punishable as provided in s.
529 775.082 or s. 775.083. However, any person who violates
530 subsection (1) for a second or subsequent time within 1 year
531 after the first violation commits a misdemeanor of the first
532 degree, punishable as provided in s. 775.082 or s. 775.083.

533 (3) Any person charged with a violation of subsection (1)
534 has a complete defense if, at the time the nicotine product was
535 sold, delivered, bartered, furnished, or given:

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

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

541 (c) Such person carefully checked a driver license or an
542 identification card issued by the state or another state of the
543 United States, a passport, or a United States armed services
544 identification card presented by the buyer or recipient and
545 acted in good faith and in reliance upon the representation and
546 appearance of the buyer or recipient in the belief that the
547 buyer or recipient was 18 years of age or older.

548 Section 21. Section 569.42, Florida Statutes, is created
549 to read:

550 569.42 Possession, misrepresenting age or military service

551 to purchase, and purchase of nicotine products by persons under
552 18 years of age; penalties; jurisdiction; disposition of fines.—

553 (1) It is unlawful for a person 18 years of age to
554 knowingly possess any nicotine product. A person under 18 years
555 of age who violates this subsection commits a noncriminal
556 violation as provided in s. 775.08(3), punishable by:

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

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

563
564 Any second or subsequent violation not within the 12-week period
565 after the first violation is punishable as provided for a first
566 violation.

567 (2) It is unlawful for a person under 18 years of age to
568 misrepresent his or her age or military service for the purpose
569 of inducing a dealer or an agent or employee of the dealer to
570 sell, give, barter, furnish, or deliver any nicotine product, or
571 to purchase, or attempt to purchase, any nicotine product from a
572 person or a vending machine. A person under 18 years of age who
573 violates this subsection commits a noncriminal violation as
574 provided in s. 775.08(3), punishable by:

575 (a) For a first violation, 16 hours of community service

576 or, instead of community service, a \$25 fine and, in addition,
577 the person must attend a school-approved anti-tobacco and anti-
578 nicotine program, if available; or

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

581
582 Any second or subsequent violation not within the 12-week period
583 after the first violation is punishable as provided for a first
584 violation.

585 (3) A person under 18 years of age cited for committing a
586 noncriminal violation under this section must sign and accept a
587 civil citation indicating a promise to appear before the county
588 court or comply with the requirement for paying the fine and
589 must attend a school-approved anti-tobacco and anti-nicotine
590 program, if locally available. If a fine is assessed for a
591 violation of this section, the fine must be paid within 30 days
592 after the date of the citation or, if a court appearance is
593 mandatory, within 30 days after the date of the hearing.

594 (4) A person charged with a noncriminal violation under
595 this section must appear before the county court or comply with
596 the requirement for paying the fine. The court, after a hearing,
597 shall make a determination as to whether the noncriminal
598 violation was committed. If the court finds the violation was
599 committed, it shall impose an appropriate penalty as specified
600 in subsection (1) or subsection (2). A person who participates

601 in community service shall be considered an employee of the
602 state for the purpose of chapter 440, for the duration of such
603 service.

604 (5) (a) If a person under 18 years of age is found by the
605 court to have committed a noncriminal violation under this
606 section and that person has failed to complete community
607 service, pay the fine as required by paragraph (1) (a) or
608 paragraph (2) (a), or attend a school-approved anti-tobacco and
609 anti-nicotine program, if locally available, the court may
610 direct the Department of Highway Safety and Motor Vehicles to
611 withhold issuance of or suspend the driver license or driving
612 privilege of that person for a period of 30 consecutive days.

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

620 (6) Eighty percent of all civil penalties received by a
621 county court under this section shall be remitted by the clerk
622 of the court to the Department of Revenue for transfer to the
623 Department of Education to provide for teacher training and for
624 research and evaluation to reduce and prevent the use of
625 nicotine products by children. The remaining 20 percent of civil

626 penalties received by a county court under this section shall
627 remain with the clerk of the county court to cover
628 administrative costs.

629 Section 22. Section 569.43, Florida Statutes, is created
630 to read:

631 569.43 Posting a sign stating that the sale of nicotine
632 products to persons under 18 years of age is unlawful;
633 enforcement; penalty.-

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

637
638 THE SALE OF NICOTINE PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE
639 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

640
641 (2) The division shall make available to dealers of
642 nicotine products signs that meet the requirements of subsection
643 (1).

644 (3) Any dealer that sells nicotine products shall provide
645 at the checkout counter in a location clearly visible to the
646 dealer or the dealer's agent or employee instructional material
647 in a calendar format or similar format to assist in determining
648 whether a person is of legal age to purchase nicotine products.
649 This point of sale material must contain substantially the
650 following language:

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

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

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

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

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

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

- (1) The number and results of compliance visits.
- (2) The number of violations for failure of a retailer to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

676 hold a valid permit.

677 (3) The number of violations for selling nicotine products
678 to persons under 18 years of age, and the results of
679 administrative hearings on the above and related issues.

680 (4) The number of persons under 18 years of age cited for
681 violations of s. 569.42 and sanctions imposed as a result of
682 citation.

683 Section 24. Section 569.45, Florida Statutes, is created
684 to read:

685 569.45 Mail order, Internet, and remote sales of nicotine
686 products; age verification.-

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

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

690 (b) "Consumer" means a person in the state who comes into
691 possession of any nicotine product who, at the time of
692 possession, is not intending to sell or distribute the nicotine
693 product, or is a retailer.

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

696 1. The consumer submits the order for the sale by
697 telephonic or other voice transmission, mail, delivery service,
698 or the Internet or other online service; or

699 2. The nicotine products are delivered by use of mail or a
700 delivery service.

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

703 (e) "Legal minimum purchase age" means the minimum age at
704 which an individual may legally purchase nicotine products in
705 the state.

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

709 (g) "Shipping container" means a container in which
710 nicotine products are shipped in connection with a delivery
711 sale.

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

716 (2) (a) A sale of nicotine products constituting a delivery
717 sale under paragraph (1) (c) is a delivery sale regardless of
718 whether the person accepting the order for the delivery sale is
719 located inside or outside the state.

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

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

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

728 1. The age verification requirements set forth in
 729 subsection (3).

730 2. The disclosure requirements set forth in subsection
 731 (4).

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

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

737 (a) Obtains from the person submitting the order a
 738 certification that includes:

739 1. Reliable confirmation that the person is an adult; and

740 2. A statement signed by the person in writing and under
 741 penalty of perjury which:

742 a. Certifies the address and date of birth of the person;
 743 and

744 b. Confirms that the person wants to receive delivery
 745 sales from a nicotine products company and understands that,
 746 under the laws of the state, the following actions are illegal:

747 (I) Signing another person's name to the certification;

748 (II) Selling nicotine products to individuals who are not
 749 adults; and

750 (III) Purchasing nicotine products, if the person making

751 the purchase is not an adult.

752 (b) Makes a good faith effort to verify the information
753 contained in the certification provided by the individual under
754 paragraph (a) against a commercially available database that may
755 be reasonably relied upon for accurate age information or
756 obtains a photocopy or other image of a valid government-issued
757 identification card stating the date of birth or age of the
758 individual.

759 (c) Provides to the individual, via electronic mail or
760 other means, a notice meeting the requirements of subsection
761 (4).

762 (d) If an order for nicotine products is made pursuant to
763 an advertisement on the Internet, receives payment for the
764 delivery sale from the consumer by a credit or debit card issued
765 in the name of the consumer, or by personal or company check of
766 the consumer.

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

773 (f) Makes a telephone call after 5 p.m. to the purchaser
774 confirming the order before shipping the nicotine products. The
775 telephone call may be a person-to-person call or a recorded

776 message. The person accepting the order for delivery sale is not
777 required to speak directly with a person and may leave a message
778 on an answering machine or through voice mail.

779
780 In addition to the requirements of this subsection, a person
781 accepting an order for a delivery sale may request that a
782 consumer provide an electronic mail address.

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

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

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

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

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

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

798 1. The individual submitting the order for the delivery
799 sale or another adult who resides at the individual's address to
800 sign his or her name to accept delivery of the shipping

801 container. Proof of the legal minimum purchase age of the
802 individual accepting delivery is required only if the individual
803 appears to be under 27 years of age.

804 2. Proof that the individual is either the addressee or
805 the adult designated by the addressee, in the form of a valid,
806 government-issued identification card bearing a photograph of
807 the individual who signs to accept delivery of the shipping
808 container.

809 (c) Provide to the delivery service, if such service is
810 used, evidence of full compliance with this subsection.

811
812 If the person accepting a purchase order for a delivery sale
813 delivers the nicotine products without using a delivery service,
814 the person must comply with all of the requirements of this
815 section which apply to a delivery service. Any failure to comply
816 with a requirement of this section constitutes a violation
817 thereof.

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

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

824 (8) The Attorney General, the Attorney General's designee,
825 or a state attorney may bring an action in the appropriate court

826 in the state to prevent or restrain violations of this section
 827 by any person.

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

830 768.73 Punitive damages; limitation.—

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

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

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

837 (b) Where the fact finder determines that the wrongful
 838 conduct proven under this section was motivated solely by
 839 unreasonable financial gain and determines that the unreasonably
 840 dangerous nature of the conduct, together with the high
 841 likelihood of injury resulting from the conduct, was actually
 842 known by the managing agent, director, officer, or other person
 843 responsible for making policy decisions on behalf of the
 844 defendant, it may award an amount of punitive damages not to
 845 exceed the greater of:

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

849 2. The sum of \$2 million.

850 (c) Where the fact finder determines that the wrongful

851 conduct proven under this section was committed by a
852 manufacturer of a vapor-generating electronic device as defined
853 in s. 386.203, or a manufacturer of a nicotine product or
854 nicotine dispensing device as defined in s. 569.31, it may award
855 against such manufacturer an amount of punitive damages not to
856 exceed the greater of:

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

860 2. The sum of \$2 million.

861 (d)-(e) Where the fact finder determines that at the time
862 of injury the defendant had a specific intent to harm the
863 claimant and determines that the defendant's conduct did in fact
864 harm the claimant, there shall be no cap on punitive damages.

865 (e)-(d) This subsection is not intended to prohibit an
866 appropriate court from exercising its jurisdiction under s.
867 768.74 in determining the reasonableness of an award of punitive
868 damages that is less than three times the amount of compensatory
869 damages.

870 Section 26. Section 877.112, Florida Statutes, is
871 repealed.

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