

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Toledo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1), paragraphs (a) and (c) of subsection (2), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraphs (a) and (b) of subsection (5), and paragraphs (a), (b), (e), and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:

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

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

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

15 ~~(a)(b)~~ "Consumer" means a person in this state who comes
16 into possession of any tobacco product subject to the tax
17 imposed by this chapter and who, at the time of possession, is
18 not a distributor intending to sell or distribute the tobacco
19 product, a retailer, or a wholesaler.

20 ~~(b)(e)~~ "Delivery sale" means any sale of tobacco products
21 to a consumer in this state for which:

22 1. The consumer submits the order for the sale by
23 telephonic or other voice transmission, mail, delivery service,
24 or the Internet or other online service; or

25 2. The tobacco products are delivered by use of mail or a
26 delivery service.

27 ~~(c)(d)~~ "Delivery service" means any person engaged in the
28 commercial delivery of letters, packages, or other containers.

29 ~~(d)(e)~~ "Legal minimum purchase age" means the minimum age
30 at which an individual may legally purchase tobacco products in
31 this state.

32 ~~(e)(f)~~ "Mail" or "mailing" means the shipment of tobacco
33 products through the United States Postal Service.

34 ~~(f)(g)~~ "Retailer" means any person who is not a licensed
35 distributor but who is in possession of tobacco products subject
36 to tax under this chapter for the purposes of selling the
37 tobacco products to consumers.

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

38 ~~(g)-(h)~~ "Shipping container" means a container in which
39 tobacco products are shipped in connection with a delivery sale.

40 ~~(h)-(i)~~ "Shipping document" means a bill of lading,
41 airbill, United States Postal Service form, or any other
42 document used to verify the undertaking by a delivery service to
43 deliver letters, packages, or other containers.

44 ~~(i)-(j)~~ "Tobacco products" means all cigarettes, smoking
45 tobacco, snuff, fine-cut chewing tobacco, cut and granulated
46 tobacco, cavendish, and plug or twist tobacco.

47 (2)

48 (a) A sale of tobacco products constituting a delivery
49 sale pursuant to paragraph (1) (b) ~~(1)(e)~~ is a delivery sale
50 regardless of whether the person accepting the order for the
51 delivery sale is located inside or outside this state.

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

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

59 (a) Obtains from the individual submitting the order a
60 certification that includes:

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

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

65 a. Certifies the address and date of birth of the
66 individual; and

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

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

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

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

76

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

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

83 (a) Illegal if made to individuals who are not 21 years of
84 age or older adults.

85

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

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

91 (a) Include as part of the shipping documents, in a clear
92 and conspicuous manner, the following statement: "Tobacco
93 Products: Florida law prohibits shipping to individuals under 21
94 ~~18~~ years of age and requires the payment of all applicable
95 taxes."

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

98 1. The individual submitting the order for the delivery
99 sale or another individual who is 21 years of age or older ~~adult~~
100 who resides at the individual's address to sign his or her name
101 to accept delivery of the shipping container. Proof of the legal
102 minimum purchase age of the individual accepting delivery is
103 required only if the individual appears to be under 27 years of
104 age.

105 2. Proof that the individual is either the addressee or
106 the individual who is 21 years of age or older ~~adult~~ designated
107 by the addressee, in the form of a valid, government-issued
108 identification card bearing a photograph of the individual who
109 signs to accept delivery of the shipping container.

110
111 If the person accepting a purchase order for a delivery sale
112 delivers the tobacco products without using a delivery service,

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

113 the person must comply with all of the requirements of this
114 section which apply to a delivery service. Any failure to comply
115 with a requirement of this section constitutes a violation
116 thereof.

117 (8) (a) Except as otherwise provided in this section, a
118 violation of this section by a person other than an individual
119 who is not 21 years of age or older ~~an adult~~ is a misdemeanor of
120 the first degree, punishable as provided in s. 775.082 or s.
121 775.083, and:

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

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

129 (b) A person who is 21 years of age or older ~~an adult~~ and
130 knowingly submits a false certification under subsection (3)
131 commits a misdemeanor of the first degree, punishable as
132 provided in s. 775.082 or s. 775.083. For each offense, the
133 person shall be fined \$10,000 or five times the retail value of
134 the tobacco products involved in the violation, whichever is
135 greater.

136 (e) A person who, in connection with a delivery sale,
137 delivers tobacco products on behalf of a delivery service to an

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

138 individual who is not 21 years of age or older ~~an adult~~ commits
139 a misdemeanor of the third degree, punishable as provided in s.
140 775.082 or s. 775.083.

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

145 Section 2. Subsection (1) of section 386.212, Florida
146 Statutes, is amended to read:

147 386.212 Smoking and vaping prohibited near school
148 property; penalty.—

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

155 Section 3. Chapter 569, entitled "Tobacco Products," is
156 renamed "Tobacco and Nicotine Products."

157 Section 4. The Division of Law Revision is directed to:

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

161 (2) Create part II of chapter 569, Florida Statutes,
162 consisting of ss. 569.31-569.45, Florida Statutes, to be

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

163 entitled "Nicotine Products."

164 Section 5. Subsections (3) through (7) of section 569.002,
165 Florida Statutes, are renumbered as subsections (5) through (9),
166 respectively, and new subsections (3) and (4) are added to that
167 section, to read:

168 569.002 Definitions.—As used in this chapter, the term:

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

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

173 (5)~~(3)~~ "Permit" is synonymous with the term "retail
174 tobacco products dealer permit."

175 (6)~~(4)~~ "Retail tobacco products dealer" means the holder
176 of a retail tobacco products dealer permit.

177 (7)~~(5)~~ "Retail tobacco products dealer permit" means a
178 permit issued by the division pursuant to s. 569.003.

179 (8)~~(6)~~ "Tobacco products" includes loose tobacco leaves,
180 and products made from tobacco leaves, in whole or in part, and
181 cigarette wrappers, which can be used for smoking, sniffing, or
182 chewing.

183 (9)~~(7)~~ "Any person under the age of 21 ~~18~~" does not
184 include any person under the age of 21 ~~18~~ who:

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

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

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

191 or

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

195 Section 6. Section 569.004, Florida Statutes, is amended
196 to read:

197 569.004 Consent to inspection and search without warrant.—
198 An applicant for a permit, by accepting the permit when issued,
199 agrees that the place or premises covered by the permit is
200 subject to inspection and search without a search warrant by the
201 division or its authorized assistants, and by sheriffs, deputy
202 sheriffs, or police officers, to determine compliance with this
203 chapter, including part II of this chapter if the applicant
204 deals, at retail, nicotine products within the state or allows a
205 nicotine products vending machine to be located on its premises
206 within the state.

207 Section 7. Section 569.006, Florida Statutes, is amended
208 to read:

209 569.006 Retail tobacco products dealers; administrative
210 penalties.—The division may suspend or revoke the permit of the
211 dealer upon sufficient cause appearing of the violation of any

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

212 of the provisions of this chapter, including part II of this
213 chapter if the dealer deals, at retail, nicotine products within
214 the state or allows a nicotine products vending machine to be
215 located on its premises within the state, by a dealer or by a
216 dealer's agent or employee. The division may also assess and
217 accept administrative fines of up to \$1,000 against a dealer for
218 each violation. The division shall deposit all fines collected
219 into the General Revenue Fund as collected. An order imposing an
220 administrative fine becomes effective 15 days after the date of
221 the order. The division may suspend the imposition of a penalty
222 against a dealer, conditioned upon the dealer's compliance with
223 terms the division considers appropriate.

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

226 569.007 Sale or delivery of tobacco products;
227 restrictions.—

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

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

233 (b) Sales from a vending machine are prohibited under the
234 provisions of paragraph (1)(a) and are only permissible from a
235 machine that is equipped with an operational lockout device
236 which is under the control of the dealer or the dealer's agent

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

237 or employee who directly regulates the sale of items through the
238 machine by triggering the lockout device to allow the dispensing
239 of one tobacco product. The lockout device must include a
240 mechanism to prevent the machine from functioning if the power
241 source for the lockout device fails or if the lockout device is
242 disabled, and a mechanism to ensure that only one tobacco
243 product is dispensed at a time.

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

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

249 569.0073 Special provisions; smoking pipes and smoking
250 devices.—

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

254 (a) Has a retail tobacco products dealer permit under s.
255 569.003. The provisions of this chapter apply to any person that
256 offers for retail sale any of the items listed in subsection
257 (2); and

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

261 2. Derives no more than 25 percent of its annual gross

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

262 revenues from the retail sale of the items listed in subsection
263 (2).

264 Section 10. Section 569.0075, Florida Statutes, is amended
265 to read:

266 569.0075 Gift of sample tobacco products prohibited.—The
267 gift of sample tobacco products to any person under the age of
268 21 ~~18~~ by an entity licensed or permitted under the provisions of
269 chapter 210 or this chapter, or by an employee of such entity,
270 is prohibited and is punishable as provided in s. 569.101.

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

274 569.008 Responsible retail tobacco products dealers;
275 qualifications; mitigation of disciplinary penalties; diligent
276 management and supervision; presumption.—

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

281 (2) To qualify as a responsible retail tobacco products
282 dealer, the dealer must establish and implement procedures
283 designed to ensure that the dealer's employees comply with the
284 provisions of this chapter. The dealer must provide a training
285 program for the dealer's employees which addresses the use and

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

286 sale of tobacco products and which includes at least the
287 following topics:

288 (b) Methods of recognizing and handling customers under 21
289 ~~18~~ years of age.

290 (c) Procedures for proper examination of identification
291 cards in order to verify that customers are not under 21 ~~18~~
292 years of age.

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

297 (a) The dealer is qualified as a responsible dealer under
298 this section.

299 (b) The dealer provided the training program required
300 under subsection (2) to that employee before the illegal sale
301 occurred.

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

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

307 Section 12. Section 569.009, Florida Statutes, is amended
308 to read:

309 569.009 Rulemaking authority.—The division shall adopt any
310 rules necessary to administer and enforce the provisions of this

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

311 part ~~chapter~~.

312 Section 13. Section 569.101, Florida Statutes, is amended
313 to read:

314 569.101 Selling, delivering, bartering, furnishing, or
315 giving tobacco products to persons under 21 ~~18~~ years of age;
316 criminal penalties; defense.—

317 (1) It is unlawful to sell, deliver, barter, furnish, or
318 give, directly or indirectly, to any person who is under 21 ~~18~~
319 years of age, any tobacco product.

320 (2) Any person who violates subsection (1) commits a
321 misdemeanor of the second degree, punishable as provided in s.
322 775.082 or s. 775.083. However, any person who violates
323 subsection (1) for a second or subsequent time within 1 year of
324 the first violation, commits a misdemeanor of the first degree,
325 punishable as provided in s. 775.082 or s. 775.083.

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

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

331 (b) The appearance of the buyer or recipient was such that
332 a prudent person would believe the buyer or recipient to be 21
333 ~~18~~ years of age or older; and

334 (c) Such person carefully checked a driver license or an
335 identification card issued by this state or another state of the

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

336 United States, a passport, or a United States armed services
337 identification card presented by the buyer or recipient and
338 acted in good faith and in reliance upon the representation and
339 appearance of the buyer or recipient in the belief that the
340 buyer or recipient was 21 ~~18~~ years of age or older.

341 Section 14. Section 569.11, Florida Statutes, is amended
342 to read:

343 569.11 Possession, misrepresenting age or military service
344 to purchase, and purchase of tobacco products by persons under
345 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
346 disposition of fines.-

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

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

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

357

358 Any second or subsequent violation not within the 12-week period
359 after the first violation is punishable as provided for a first
360 violation.

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

361 (2) It is unlawful for any person under 21 ~~18~~ years of age
362 to misrepresent his or her age or military service for the
363 purpose of inducing a dealer or an agent or employee of the
364 dealer to sell, give, barter, furnish, or deliver any tobacco
365 product, or to purchase, or attempt to purchase, any tobacco
366 product from a person or a vending machine. Any person under 21
367 ~~18~~ years of age who violates this subsection commits a
368 noncriminal violation as provided in s. 775.08(3), punishable
369 by:

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

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

376
377 Any second or subsequent violation not within the 12-week period
378 after the first violation is punishable as provided for a first
379 violation.

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

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

389 (4) A person charged with a noncriminal violation under
390 this section must appear before the county court or comply with
391 the requirement for paying the fine. The court, after a hearing,
392 shall make a determination as to whether the noncriminal
393 violation was committed. If the court finds the violation was
394 committed, it shall impose an appropriate penalty as specified
395 in subsection (1) or subsection (2). A person who participates
396 in community service shall be considered an employee of the
397 state for the purpose of chapter 440, for the duration of such
398 service.

399 (5) (a) If a person under 21 ~~18~~ years of age is found by
400 the court to have committed a noncriminal violation under this
401 section and that person has failed to complete community
402 service, pay the fine as required by paragraph (1) (a) or
403 paragraph (2) (a), or attend a school-approved anti-tobacco
404 program, if locally available, the court may direct the
405 Department of Highway Safety and Motor Vehicles to withhold
406 issuance of or suspend the driver license or driving privilege
407 of that person for a period of 30 consecutive days.

408 (b) If a person under 21 ~~18~~ years of age is found by the
409 court to have committed a noncriminal violation under this
410 section and that person has failed to pay the applicable fine as

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

411 required by paragraph (1) (b) or paragraph (2) (b), the court may
412 direct the Department of Highway Safety and Motor Vehicles to
413 withhold issuance of or suspend the driver license or driving
414 privilege of that person for a period of 45 consecutive days.

415 (6) Eighty percent of all civil penalties received by a
416 county court pursuant to this section shall be remitted by the
417 clerk of the court to the Department of Revenue for transfer to
418 the Department of Education to provide for teacher training and
419 for research and evaluation to reduce and prevent the use of
420 tobacco products by children. The remaining 20 percent of civil
421 penalties received by a county court pursuant to this section
422 shall remain with the clerk of the county court to cover
423 administrative costs.

424 Section 15. Section 569.12, Florida Statutes, is amended
425 to read:

426 569.12 Jurisdiction; tobacco product and nicotine product
427 enforcement officers or agents; enforcement.—

428 (1) In addition to the Division of Alcoholic Beverages and
429 Tobacco of the Department of Business and Professional
430 Regulation, any law enforcement officer certified under s.
431 943.10(1), (6), or (8) shall enforce the provisions of this
432 chapter.

433 (2) (a) A county or municipality may designate certain of
434 its employees or agents as tobacco product and nicotine product
435 enforcement officers. The training and qualifications of the

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

436 employees or agents for such designation shall be determined by
437 the county or the municipality. Nothing in this section shall be
438 construed to permit the carrying of firearms or other weapons by
439 a tobacco product and nicotine product enforcement agent, nor
440 does designation as a tobacco product and nicotine product
441 enforcement officer provide the employee or agent with the power
442 of arrest or subject the employee or agent to the provisions of
443 ss. 943.085-943.255. Nothing in this section amends, alters, or
444 contravenes the provisions of any state-administered retirement
445 system or any state-supported retirement system established by
446 general law.

447 (b) A tobacco and nicotine product enforcement officer is
448 authorized to issue a citation to a person under the age of 21
449 ~~18~~ when, based upon personal investigation, the officer has
450 reasonable cause to believe that the person has committed a
451 civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s.
452 569.42.

453 (3) A correctional probation officer as defined in s.
454 943.10(3) is authorized to issue a citation to a person under
455 the age of 21 ~~18~~ when, based upon personal investigation, the
456 officer has reasonable cause to believe that the person has
457 committed a civil infraction in violation of s. 569.11 or s.
458 569.42.

459 (4) A citation issued to any person violating the
460 provisions of s. 569.11 or s. 569.42 shall be in a form

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

461 prescribed by the Division of Alcoholic Beverages and Tobacco of
462 the Department of Business and Professional Regulation and shall
463 contain:

464 (a) The date and time of issuance.

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

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

468 (d) The facts constituting reasonable cause.

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

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

471 (g) The procedure for the person to follow in order to
472 contest the citation, perform the required community service,
473 attend the required anti-tobacco or anti-tobacco and anti-
474 nicotine program, or to pay the civil penalty.

475 Section 16. Section 569.14, Florida Statutes, is amended
476 to read:

477 569.14 Posting of a sign stating that the sale of tobacco
478 products or nicotine products to persons under 21 ~~18~~ years of
479 age is unlawful; enforcement; penalty.—

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

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

485 (2) A dealer that sells tobacco products and nicotine
486 products or nicotine dispensing devices, ~~as defined in s.~~
487 ~~877.112,~~ may use a sign that substantially states the following:
488 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
489 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST
490 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

491 A dealer that uses a sign as described in this subsection meets
492 the signage requirements of subsection (1) and s. 569.43(1) ~~s.~~
493 ~~877.112.~~

494 (3) The division shall make available to dealers of
495 tobacco products signs that meet the requirements of subsection
496 (1) or subsection (2).

497 (4) Any dealer that sells tobacco products shall provide
498 at the checkout counter in a location clearly visible to the
499 dealer or the dealer's agent or employee instructional material
500 in a calendar format or similar format to assist in determining
501 whether a person is of legal age to purchase tobacco products.
502 This point of sale material must contain substantially the
503 following language:

504 IF YOU WERE NOT BORN BEFORE THIS DATE

505 (insert date and applicable year)

506 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS,
507 OR NICOTINE DISPENSING DEVICES.

508 Upon approval by the division, in lieu of a calendar a dealer
509 may use card readers, scanners, or other electronic or automated

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

510 systems that can verify whether a person is of legal age to
511 purchase tobacco products. Failure to comply with the provisions
512 contained in this subsection shall result in imposition of
513 administrative penalties as provided in s. 569.006.

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

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

519 Section 17. Section 569.19, Florida Statutes, is amended
520 to read:

521 569.19 Annual report.—The division shall report annually
522 with written findings to the Legislature and the Governor by
523 December 31, on the progress of implementing the enforcement
524 provisions of this part ~~chapter~~. This must include, but is not
525 limited to:

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

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

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

532 (4) The number of persons under age 21 ~~18~~ cited for
533 violations of s. 569.11 and sanctions imposed as a result of
534 citation.

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

535 Section 18. Section 569.31, Florida Statutes, is created
536 to read:

537 569.31 Definitions.—As used in this part, the term:

538 (1) "Dealer" is synonymous with the term "retail nicotine
539 products dealer."

540 (2) "Division" means the Division of Alcoholic Beverages
541 and Tobacco of the Department of Business and Professional
542 Regulation.

543 (3) "Nicotine dispensing device" means any product that
544 employs an electronic, chemical, or mechanical means to produce
545 vapor or aerosol from a nicotine product, including, but not
546 limited to, an electronic cigarette, electronic cigar,
547 electronic cigarillo, electronic pipe, or other similar device
548 or product, any replacement cartridge for such device, and any
549 other container of nicotine in a solution or other form intended
550 to be used with or within an electronic cigarette, electronic
551 cigar, electronic cigarillo, electronic pipe, or other similar
552 device or product.

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

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

559 (b) Product regulated as a drug or device by the United

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

560 States Food and Drug Administration under Chapter V of the
561 Federal Food, Drug, and Cosmetic Act; or

562 (c) Product that contains incidental nicotine.

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

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

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

569 (8) "Self-service merchandising" means the open display of
570 nicotine products, whether packaged or otherwise, for direct
571 retail customer access and handling before purchase without the
572 intervention or assistance of the retailer or the retailer's
573 owner, employee, or agent. An open display of such products and
574 devices includes the use of an open display unit.

575 (9) "Any person under the age of 21" does not include any
576 person under the age of 21 who:

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

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

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

583 or

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

585 Section 19. Section 569.32, Florida Statutes, is created
586 to read:

587 569.32 Retail nicotine products dealer permits;
588 application; qualifications; renewal; duplicates.-

589 (1)(a) Each person, firm, association, or corporation that
590 seeks to deal, at retail, in nicotine products within the state,
591 or to allow a nicotine products vending machine to be located on
592 its premises in the state, must obtain a retail nicotine
593 products dealer permit for each place of business or the
594 premises at which nicotine products are sold. Each dealer
595 owning, leasing, furnishing, or operating vending machines
596 through which nicotine products are sold must obtain a permit
597 for each machine and shall post the permit in a conspicuous
598 place on or near the machine; however, if the dealer has more
599 than one vending machine at a single location or if nicotine
600 products are sold both over the counter and through a vending
601 machine at a single location, the dealer need obtain only one
602 permit for that location.

603 (b) Application for a permit must be made on a form
604 furnished by the division and must set forth the name under
605 which the applicant transacts or intends to transact business,
606 the address of the location of the applicant's place of business
607 within the state, and any other information the division
608 requires. If the applicant has or intends to have more than one
609 place of business dealing in nicotine products within the state,

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

610 a separate application must be made for each place of business.
611 If the applicant is a firm or an association, the application
612 must set forth the names and addresses of the persons
613 constituting the firm or association; if the applicant is a
614 corporation, the application must set forth the names and
615 addresses of the principal officers of the corporation. The
616 application must also set forth any other information prescribed
617 by the division for the purpose of identifying the applicant
618 firm, association, or corporation. The application must be
619 signed and verified by oath or affirmation by the owner, if a
620 sole proprietor, or, if the owner is a firm, association, or
621 partnership, by the members or partners thereof, or, if the
622 owner is a corporation, by an executive officer of the
623 corporation or by a person authorized by the corporation to sign
624 the application, together with the written evidence of this
625 authority.

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

629 (b) The division may refuse to issue a permit to any
630 person, firm, association, or corporation the permit of which
631 has been revoked, to any corporation an officer of which has had
632 his or her permit revoked, or to any person who is or has been
633 an officer of a corporation the permit of which has been
634 revoked. Any permit issued to a firm, association, or

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

635 corporation prohibited from obtaining a permit under this
636 chapter shall be revoked by the division.

637 (3) Upon approval of an application for a permit, the
638 division shall issue to the applicant a permit for the place of
639 business or premises specified in the application. A permit is
640 not assignable and is valid only for the person in whose name
641 the permit is issued and for the place designated in the permit.
642 The permit shall be conspicuously displayed at all times at the
643 place for which issued.

644 Section 20. Section 569.33 Florida Statutes, is created to
645 read:

646 569.33 Consent to inspection and search without warrant.-
647 An applicant for a retail nicotine products dealer permit, by
648 accepting the permit when issued, agrees that the place or
649 premises covered by the permit is subject to inspection and
650 search without a search warrant by the division or its
651 authorized assistants, and by sheriffs, deputy sheriffs, or
652 police officers, to determine compliance with this part.

653 Section 21. Section 569.34, Florida Statutes, is created
654 to read:

655 569.34 Operating without a retail nicotine products dealer
656 permit; penalty.-

657 (1) It is unlawful for a person, firm, association, or
658 corporation to deal, at retail, in nicotine products, in any
659 manner, or to allow a nicotine products vending machine to be

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

660 located on its premises, without having a retail nicotine
661 product dealer permit as required by s. 569.32. A person who
662 violates this section commits a noncriminal violation,
663 punishable by a fine of not more than \$500.

664 (2) A retail tobacco products dealer, as defined in s.
665 569.002, is not required to have a separate or additional retail
666 nicotine products dealer permit to deal, at retail, nicotine
667 products in the state, or allow a nicotine products vending
668 machine to be located on its premises in the state. Any retail
669 tobacco products dealer that deals, at retail, in nicotine
670 products or allows a tobacco products vending machine to be
671 located on its premises in the state, is subject to, and must be
672 in compliance with, this part.

673 (3) Any person who violates this section shall be cited
674 for such infraction and shall be cited to appear before the
675 county court. The citation may indicate the time, date, and
676 location of the scheduled hearing and must indicate that the
677 penalty for a noncriminal violation is a fine of not more than
678 \$500.

679 (a) A person cited for an infraction under this section
680 may:

681 1. Post a \$500 bond; or
682 2. Sign and accept the citation indicating a promise to
683 appear.

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

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

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

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

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

699 (e) If a person is found by the court to have committed
700 the infraction, that person may appeal that finding to the
701 circuit court.

702 Section 22. Section 569.35, Florida Statutes, is created
703 to read:

704 569.35 Retail nicotine product dealers; administrative
705 penalties.—The division may suspend or revoke the permit of a
706 dealer, including the retail tobacco products dealer permit of a
707 retail tobacco products dealer as defined in s. 569.002, upon
708 sufficient cause appearing of the violation of any of the
709 provisions of this part, by a dealer, or by a dealer's agent or

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

710 employee. The division may also assess and accept an
711 administrative fine of up to \$1,000 against a dealer for each
712 violation. The division shall deposit all fines collected into
713 the General Revenue Fund as collected. An order imposing an
714 administrative fine becomes effective 15 days after the date of
715 the order. The division may suspend the imposition of a penalty
716 against a dealer, conditioned upon the dealer's compliance with
717 terms the division considers appropriate.

718 Section 23. Section 569.37, Florida Statutes, is created
719 to read:

720 569.37 Sale or delivery of nicotine products;
721 restrictions.—

722 (1) In order to prevent persons under 21 years of age from
723 purchasing or receiving nicotine products, the sale or delivery
724 of nicotine products is prohibited, except:

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

727 (b) Sales from a vending machine are prohibited under
728 paragraph (a) and are only permissible from a machine that is
729 equipped with an operational lockout device that is under the
730 control of the dealer or the dealer's agent or employee who
731 directly regulates the sale of items through the machine by
732 triggering the lockout device to allow the dispensing of one
733 nicotine product. The lockout device must include a mechanism to
734 prevent the machine from functioning if the power source for the

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

735 lockout device fails or if the lockout device is disabled, and a
736 mechanism to ensure that only one nicotine product is dispensed
737 at a time.

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

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

744 (3) The provisions of subsections (1) and (2) shall not
745 apply to an establishment that prohibits persons under 21 years
746 of age on the licensed premises.

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

750 Section 24. Section 569.38, Florida Statutes, is created
751 to read:

752 569.38 Gift of sample nicotine products and nicotine
753 dispensing devices.—The gift of sample nicotine products to any
754 person under the age of 21 by an entity permitted under this
755 chapter, or by an employee of such entity, is prohibited and is
756 punishable as provided in s. 569.41.

757 Section 25. Section 569.381, Florida Statutes, is created
758 to read:

759 569.381 Responsible retail nicotine products dealers;

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

760 qualifications; mitigation of disciplinary penalties; diligent
761 management and supervision; presumption.—

762 (1) It is the intent of the Legislature to prevent the
763 sale of nicotine products to persons under 21 years of age and
764 to encourage retail nicotine products dealers to comply with
765 responsible practices in accordance with this section.

766 (2) To qualify as a responsible retail nicotine products
767 dealer, the dealer must establish and implement procedures
768 designed to ensure that the dealer's employees comply with this
769 part. The dealer must provide a training program for the
770 dealer's employees which addresses the use and sale of nicotine
771 products and which includes at least the following topics:

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

773 (b) Methods of recognizing and handling customers under 21
774 years of age.

775 (c) Procedures for proper examination of identification
776 cards in order to verify that customers are not under 21 years
777 of age.

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

780 (3) In determining penalties under s. 569.35, the division
781 may mitigate penalties imposed against a dealer because of an
782 employee's illegal sale of a nicotine product to a person under
783 21 years of age if the following conditions are met:

784 (a) The dealer is qualified as a responsible dealer under

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

785 this section.

786 (b) The dealer provided the training program required
787 under subsection (2) to that employee before the illegal sale
788 occurred.

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

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

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

798 (5) Dealers shall exercise diligence in the management and
799 supervision of their premises and in the supervision and
800 training of their employees, agents, or servants. In proceedings
801 to impose penalties under s. 569.35, proof that employees,
802 agents, or servants of the dealer, while in the scope of their
803 employment, committed at least three violations of s. 569.41
804 during a 180-day period shall be prima facie evidence of a lack
805 of due diligence by the dealer in the management and supervision
806 of his or her premises and in the supervision and training of
807 employees, agents, officers, or servants.

808 (6) The division may consider qualification as a
809 responsible retail nicotine products dealer under this section

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

810 as evidence that the dealer properly exercised the diligence
811 required under this section.

812 Section 26. Section 569.39, Florida Statutes, is created
813 to read:

814 569.39 Rulemaking authority.—The division shall adopt any
815 rules necessary to administer and enforce the provisions of this
816 part.

817 Section 27. Section 569.41, Florida Statutes, is created
818 to read:

819 569.41 Selling, delivering, bartering, furnishing, or
820 giving nicotine products to persons under 21 years of age;
821 criminal penalties; defense.—

822 (1) It is unlawful to sell, deliver, barter, furnish, or
823 give, directly or indirectly, to any person who is under 21
824 years of age, any nicotine product.

825 (2) Any person who violates subsection (1) commits a
826 misdemeanor of the second degree, punishable as provided in s.
827 775.082 or s. 775.083. However, any person who violates
828 subsection (1) for a second or subsequent time within 1 year
829 after the first violation commits a misdemeanor of the first
830 degree, punishable as provided in s. 775.082 or s. 775.083.

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

834 (a) The buyer or recipient falsely evidenced that she or

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

835 he was 21 years of age or older;

836 (b) The appearance of the buyer or recipient was such that
837 a prudent person would believe the buyer or recipient to be 21
838 years of age or older; and

839 (c) Such person carefully checked a driver license or an
840 identification card issued by the state or another state of the
841 United States, a passport, or a United States armed services
842 identification card presented by the buyer or recipient and
843 acted in good faith and in reliance upon the representation and
844 appearance of the buyer or recipient in the belief that the
845 buyer or recipient was 21 years of age or older.

846 Section 28. Section 569.42, Florida Statutes, is created
847 to read:

848 569.42 Possession, misrepresenting age or military service
849 to purchase, and purchase of nicotine products by persons under
850 21 years of age prohibited; penalties; jurisdiction; disposition
851 of fines.—

852 (1) It is unlawful for any person under 21 years of age to
853 knowingly possess any nicotine product. Any person under 21
854 years of age who violates this subsection commits a noncriminal
855 violation as provided in s. 775.08(3), punishable by:

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

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

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

862
863 Any second or subsequent violation not within the 12-week period
864 after the first violation is punishable as provided for a first
865 violation.

866 (2) It is unlawful for any person under 21 years of age to
867 misrepresent his or her age or military service for the purpose
868 of inducing a dealer or an agent or employee of the dealer to
869 sell, give, barter, furnish, or deliver any nicotine product, or
870 to purchase, or attempt to purchase, any nicotine product from a
871 person or a vending machine. Any person under 21 years of age
872 who violates this subsection commits a noncriminal violation as
873 defined in s. 775.08(3), punishable by:

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

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

880
881 Any second or subsequent violation not within the 12-week period
882 after the first violation is punishable as provided for a first
883 violation.

884 (3) Any person under 21 years of age cited for committing

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

885 a noncriminal violation under this section must sign and accept
886 a civil citation indicating a promise to appear before the
887 county court or comply with the requirement for paying the fine
888 and must attend a school-approved anti-tobacco and anti-nicotine
889 program, if locally available. If a fine is assessed for a
890 violation of this section, the fine must be paid within 30 days
891 after the date of the citation or, if a court appearance is
892 mandatory, within 30 days after the date of the hearing.

893 (4) A person charged with a noncriminal violation under
894 this section must appear before the county court or comply with
895 the requirement for paying the fine. The court, after a hearing,
896 shall make a determination as to whether the noncriminal
897 violation was committed. If the court finds the violation was
898 committed, it shall impose an appropriate penalty as specified
899 in subsection (1) or subsection (2). A person who participates
900 in community service shall be considered an employee of the
901 state for the purpose of chapter 440, for the duration of such
902 service.

903 (5) (a) If a person under 21 years of age is found by the
904 court to have committed a noncriminal violation under this
905 section and the person has failed to complete community service,
906 pay the fine as required by paragraph (1) (a) or paragraph
907 (2) (a), or attend a school-approved anti-tobacco and anti-
908 nicotine program, if locally available, the court may direct the
909 Department of Highway Safety and Motor Vehicles to withhold

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

910 issuance of or suspend the driver license or driving privilege
911 of that person for a period of 30 consecutive days.

912 (b) If a person under 21 years of age is found by the
913 court to have committed a noncriminal violation under this
914 section and that person has failed to pay the applicable fine as
915 required by paragraph (1) (b) or paragraph (2) (b), the court may
916 direct the Department of Highway Safety and Motor Vehicles to
917 withhold issuance of or suspend the driver license or driving
918 privilege of that person for a period of 45 consecutive days.

919 (6) Eighty percent of all civil penalties received by a
920 county court under this section shall be remitted by the clerk
921 of the court to the Department of Revenue for transfer to the
922 Department of Education to provide for teacher training and for
923 research and evaluation to reduce and prevent the use of
924 nicotine products by children. The remaining 20 percent of civil
925 penalties received by a county court under this section shall
926 remain with the clerk of the county court to cover
927 administrative costs.

928 Section 29. Section 569.43, Florida Statutes, is created
929 to read:

930 569.43 Posting of a sign stating that the sale of nicotine
931 products to persons under 21 years of age is unlawful;
932 enforcement; penalty.-

933 (1) A dealer that sells nicotine products shall post a
934 clear and conspicuous sign in each place of business at which

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

935 such products are sold which substantially states the following:

936

937 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING

938 DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST

939 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

940

941 (2) The division shall make available to dealers of

942 nicotine products signs that meet the requirements of subsection

943 (1).

944 (3) Any dealer that sells nicotine products shall provide

945 at the checkout counter in a location clearly visible to the

946 dealer or the dealer's agent or employee instructional material

947 in a calendar format or similar format to assist in determining

948 whether a person is of legal age to purchase nicotine products.

949 This point of sale material must contain substantially the

950 following language:

951

952 IF YOU WERE NOT BORN BEFORE THIS DATE

953 (insert date and applicable year)

954 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS,

955 OR NICOTINE DISPENSING DEVICES.

956

957 Upon approval by the division, in lieu of a calendar a dealer

958 may use card readers, scanners, or other electronic or automated

959 systems that can verify whether a person is of legal age to

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

960 purchase nicotine products. Failure to comply with the
961 provisions contained in this subsection shall result in
962 imposition of administrative penalties as provided in s. 569.35.

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

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

968 Section 30. Section 569.44, Florida Statutes, is created
969 to read:

970 569.44 Annual report.—The division shall report annually
971 with written findings to the Legislature and the Governor by
972 December 31, on the progress of implementing the enforcement
973 provisions of this part. This must include, but is not limited
974 to:

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

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

978 (3) The number of violations for selling nicotine products
979 to persons under age 21, and the results of administrative
980 hearings on the above and related issues.

981 (4) The number of persons under age 21 cited for
982 violations of s. 569.42 and sanctions imposed as a result of
983 citation.

984 Section 31. Section 569.45, Florida Statutes, is created

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

985 to read:

986 569.45 Mail order, Internet, and remote sales of nicotine
987 products; age verification.-

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

989 (a) "Consumer" means a person in the state who comes into
990 possession of any nicotine product who, at the time of
991 possession, is not intending to sell or distribute the nicotine
992 product, or is a retailer.

993 (b) "Delivery sale" means any sale of nicotine products to
994 a consumer in the state for which:

995 1. The consumer submits the order for the sale by
996 telephonic or other voice transmission, mail, delivery service,
997 or the Internet or other online service; or

998 2. The nicotine products are delivered by use of mail or a
999 delivery service.

1000 (c) "Delivery service" means any person engaged in the
1001 commercial delivery of letters, packages, or other containers.

1002 (d) "Legal minimum purchase age" means the minimum age at
1003 which an individual may legally purchase nicotine products in
1004 the state.

1005 (e) "Retailer" means any person who is required to obtain
1006 a retail nicotine products dealer permit or a retail tobacco
1007 products dealer permit, as defined in s. 569.002.

1008 (f) "Shipping container" means a container in which
1009 nicotine products are shipped in connection with a delivery

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1010 sale.

1011 (g) "Shipping document" means a bill of lading, airbill,
1012 United States Postal Service form, or any other document used to
1013 verify the undertaking by a delivery service to deliver letters,
1014 packages, or other containers.

1015 (2) (a) A sale of nicotine products constituting a delivery
1016 sale under paragraph (1) (c) is a delivery sale regardless of
1017 whether the person accepting the order for the delivery sale is
1018 located inside or outside the state.

1019 (b) A retailer must obtain a retail nicotine products
1020 dealer permit or a retail tobacco products dealer permit, as
1021 defined in s. 569.002, from the division under the requirements
1022 of this chapter before accepting an order for a delivery sale.

1023 (c) A person may not make a delivery sale of nicotine
1024 products to any individual who is not 21 years of age or older.

1025 (d) Each person accepting an order for a delivery sale
1026 must comply with each of the following:

1027 1. The age verification requirements set forth in
1028 subsection (3).

1029 2. The disclosure requirements set forth in subsection
1030 (4).

1031 3. The shipping requirements set forth in subsection (5).

1032 (3) A person may not mail, ship, or otherwise deliver
1033 nicotine products in connection with an order for a delivery
1034 sale unless, before the first delivery to the consumer, the

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1035 person accepting the order for the delivery sale:

1036 (a) Obtains from the person submitting the order a
1037 certification that includes:

1038 1. Reliable confirmation that the person is 21 years of
1039 age or older; and

1040 2. A statement signed by the person in writing and under
1041 penalty of perjury which:

1042 a. Certifies the address and date of birth of the person;
1043 and

1044 b. Confirms that the person wants to receive delivery
1045 sales from a nicotine products company and understands that,
1046 under the laws of the state, the following actions are illegal:

1047 (I) Signing another person's name to the certification;

1048 (II) Selling nicotine products to individuals who are not
1049 21 years of age or older; and

1050 (III) Purchasing nicotine products, if the person making
1051 the purchase is not 21 years of age or older.

1052 (b) Makes a good faith effort to verify the information
1053 contained in the certification provided by the individual under
1054 paragraph (a) against a commercially available database that may
1055 be reasonably relied upon for accurate age information or
1056 obtains a photocopy or other image of a valid government-issued
1057 identification card stating the date of birth or age of the
1058 individual.

1059 (c) Provides to the individual, via electronic mail or

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1060 other means, a notice meeting the requirements of subsection
1061 (4).

1062 (d) If an order for nicotine products is made pursuant to
1063 an advertisement on the Internet, receives payment for the
1064 delivery sale from the consumer by a credit or debit card issued
1065 in the name of the consumer, or by personal or company check of
1066 the consumer.

1067 (e) The person accepting the order for delivery sale shall
1068 submit, to each credit card acquiring company with which the
1069 person has credit card sales, identification information in an
1070 appropriate form and format so that the words "nicotine product"
1071 may be printed in the purchaser's credit card statement when a
1072 purchase of a nicotine product is made by credit card payment.

1073 (f) Makes a telephone call after 5 p.m. to the purchaser
1074 confirming the order before shipping the nicotine products. The
1075 telephone call may be a person-to-person call or a recorded
1076 message. The person accepting the order for delivery sale is not
1077 required to speak directly with a person and may leave a message
1078 on an answering machine or through voice mail.

1079
1080 In addition to the requirements of this subsection, a person
1081 accepting an order for a delivery sale may request that a
1082 consumer provide an electronic mail address.

1083 (4) The notice described in paragraph (3)(c) must include
1084 prominent and clearly legible statements that sales of nicotine

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1085 products are:

1086 (a) Illegal if made to individuals who are not 21 years of
1087 age or older.

1088 (b) Restricted to those individuals who provide verifiable
1089 proof of age in accordance with subsection (3).

1090 (5) Each person who mails, ships, or otherwise delivers
1091 nicotine products in connection with an order for a delivery
1092 sale must:

1093 (a) Include as part of the shipping documents, in a clear
1094 and conspicuous manner, the following statement: "Nicotine
1095 Products: Florida law prohibits shipping to individuals under 21
1096 years of age."

1097 (b) Use a method of mailing, shipping, or delivery which
1098 obligates the delivery service to require:

1099 1. The individual submitting the order for the delivery
1100 sale or another individual who is 21 years of age or older who
1101 resides at the individual's address to sign his or her name to
1102 accept delivery of the shipping container. Proof of the legal
1103 minimum purchase age of the individual accepting delivery is
1104 required only if the individual appears to be under 27 years of
1105 age.

1106 2. Proof that the individual is either the addressee or
1107 the individual who is 21 years of age or older designated by the
1108 addressee, in the form of a valid, government-issued
1109 identification card bearing a photograph of the individual who

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1110 signs to accept delivery of the shipping container.

1111

1112 If the person accepting a purchase order for a delivery sale
1113 delivers the nicotine products without using a delivery service,
1114 the person must comply with all of the requirements of this
1115 section which apply to a delivery service. Any failure to comply
1116 with a requirement of this section constitutes a violation
1117 thereof.

1118 (6) This section does not apply to delivery sales of
1119 nicotine products to a retail nicotine products dealer or a
1120 retail tobacco products dealer, as defined in s. 569.002.

1121 (7) An individual who is 21 years of age or older who
1122 knowingly violates any provision of this section commits a
1123 misdemeanor of the second degree, punishable as provided in s.
1124 775.082 or s. 775.083.

1125 (8) The Attorney General, the Attorney General's designee,
1126 or a state attorney may bring an action in the appropriate court
1127 in the state to prevent or restrain violations of this section
1128 by any person.

1129 Section 32. Section 569.46, Florida Statutes, is created
1130 to read:

1131 569.46 Selling, delivering, bartering, furnishing, or
1132 giving certain flavored nicotine products to any person;
1133 criminal penalties.—

1134 (1) For purposes of this section "cartridge-based nicotine

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1135 dispensing device" means a type of nicotine dispensing device
1136 that consists of, includes, or involves a cartridge or pod that
1137 holds liquid that is to be aerosolized or vaporized through
1138 product use.

1139 (2) For purposes of this section "cartridge" or "pod" is
1140 any enclosed unit, sealed or unsealed, designed to fit within or
1141 operate as part of a cartridge-based nicotine dispensing device.

1142 (3) It is unlawful to sell, deliver, barter, furnish, or
1143 give, directly or indirectly, to any person:

1144 (a) A cartridge-based nicotine dispensing device preloaded
1145 with any cartridge or pod that holds a flavored nicotine product
1146 containing a natural or artificial ingredient or additive that
1147 causes the product to have any taste or aroma including, but not
1148 limited to, fruit, chocolate, vanilla, honey, candy, cocoa, a
1149 dessert, an alcoholic beverage, an herb or spice, or any
1150 combination thereof. However, this prohibition does not include
1151 a natural or artificial ingredient or additive that causes the
1152 product to have a taste or aroma of tobacco or menthol.

1153 (b) A cartridge or pod that holds a flavored nicotine
1154 product containing a natural or artificial ingredient or
1155 additive that causes the product to have any taste or aroma
1156 including, but not limited to, fruit, chocolate, vanilla, honey,
1157 candy, cocoa, a dessert, an alcoholic beverage, an herb or
1158 spice, or any combination thereof. However, this prohibition
1159 does not include a natural or artificial ingredient or additive

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1160 that causes the product to have a taste or aroma of tobacco or
1161 menthol.

1162 (4) Any person who knowingly violates this section commits
1163 a misdemeanor of the second degree, punishable as provided in s.
1164 775.082 or s. 775.083. However, any person who knowingly
1165 violates subsection (1) for a second or subsequent time within 1
1166 year after the first violation commits a misdemeanor of the
1167 first degree, punishable as provided in s. 775.082 or s.
1168 775.083.

1169 (5) This section does not apply to any product that
1170 receives a marketing order issued by the United States Food and
1171 Drug Administration under 21 U.S.C. s. 387j.

1172 Section 33. Section 877.112, Florida Statutes, is
1173 repealed.

1174 Section 34. This act shall take effect October 1, 2020.

1175
1176 -----

1177 **T I T L E A M E N D M E N T**

1178 Remove everything before the enacting clause and insert:

1179 A bill to be entitled

1180 An act relating to the use of tobacco products and
1181 nicotine products; amending s. 210.095, F.S.; deleting
1182 the definition of the term "adult"; conforming
1183 provisions to changes made by the act; amending s.
1184 386.212, F.S.; providing that it is unlawful for

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1185 persons under 21 years of age to smoke tobacco in, on,
1186 or within 1,000 feet of the real property comprising a
1187 public or private elementary, middle, or secondary
1188 school during specified hours; renaming ch. 569, F.S.;
1189 providing directives to the Division of Law Revision;
1190 amending s. 569.002, F.S.; revising and providing
1191 definitions; amending ss. 569.004 and 569.006, F.S.;
1192 conforming provisions to changes made by the act;
1193 amending s. 569.007, F.S.; providing that it is
1194 unlawful to sell or deliver tobacco products to
1195 persons under 21 years of age; amending s. 569.0073,
1196 F.S.; revising an exception to a prohibition of the
1197 offer for sale at retail of specified items; amending
1198 s. 569.0075, F.S.; prohibiting certain entities from
1199 gifting sample tobacco products to persons under 21
1200 years of age; amending s. 569.008, F.S.; revising
1201 legislative intent; amending s. 569.009, F.S.;
1202 conforming provisions to changes made by the act;
1203 amending s. 569.101, F.S.; providing that it is
1204 unlawful to sell, deliver, barter, furnish, or give
1205 tobacco products to persons under 21 years of age;
1206 conforming provisions to changes made by the act;
1207 amending s. 569.11, F.S.; prohibiting persons under 21
1208 years of age from possessing tobacco products;
1209 providing that it is unlawful for persons under 21

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1210 years of age to misrepresent their age or military
1211 service to acquire tobacco products; amending s.
1212 569.12, F.S.; expanding authority of tobacco product
1213 enforcement officers to include nicotine products;
1214 amending s. 569.14, F.S.; revising requirements for
1215 certain signage; amending 569.19, F.S.; conforming a
1216 provision to changes made by the act; creating s.
1217 569.31, F.S.; providing definitions; creating s.
1218 569.32, F.S.; requiring retailer nicotine product
1219 dealers to have a permit; providing requirements for
1220 such permit; creating s. 569.33, F.S.; providing for
1221 consent to inspection and search; creating s. 569.34,
1222 F.S.; prohibiting certain persons, firms,
1223 associations, or corporations from operating without a
1224 permit; providing a penalty; creating s. 569.35, F.S.;
1225 providing administrative penalties for retail nicotine
1226 product dealers under certain circumstances; creating
1227 s. 569.37, F.S.; providing restrictions of the sale or
1228 delivery of nicotine products; creating s. 569.38,
1229 F.S.; prohibiting giving nicotine product samples to
1230 certain persons; creating s. 569.381, F.S.; providing
1231 legislative intent, qualifications for responsible
1232 retail nicotine product dealers, and mitigation of
1233 disciplinary penalties; creating s. 569.39, F.S.;
1234 requiring the division to adopt rules; creating ss.

117869

Approved For Filing: 3/10/2020 8:22:10 AM

Amendment No.

1235 569.41 and 569.42, F.S.; providing civil and criminal
1236 penalties; creating s. 569.43, F.S.; providing signage
1237 requirements; creating s. 569.44, F.S.; requiring an
1238 annual report; creating s. 569.45, F.S.; providing
1239 requirements for remote sales of nicotine products;
1240 providing a criminal penalty for knowingly violating
1241 such requirements; creating s. 569.46, F.S.;
1242 prohibiting the sale of certain flavored products;
1243 providing an exception; providing criminal penalties;
1244 repealing s. 877.112, F.S., relating to nicotine
1245 products and nicotine dispensing devices; providing an
1246 effective date.

117869

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