



155716

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/21/2020	.	
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	.	
	.	

The Committee on Health Policy (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (1) of section
210.15, Florida Statutes, is amended to read:

210.15 Permits.—

(1)

(b) Permits shall be issued only to persons of good moral
character, who are not less than 21 ~~18~~ years of age. Permits to



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11 corporations shall be issued only to corporations whose officers
12 are of good moral character and not less than 21 ~~18~~ years of
13 age. There shall be no exemptions from the permit fees herein
14 provided to any persons, association of persons, or corporation,
15 any law to the contrary notwithstanding.

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

18 386.212 Smoking and vaping prohibited near school property;
19 penalty.—

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

26 Section 3. Subsections (6) and (7) of section 569.002,
27 Florida Statutes, are amended to read:

28 569.002 Definitions.—As used in this chapter, the term:

29 (6) "Tobacco products" includes:

30 (a) Any product containing, made of, or derived from
31 tobacco or nicotine that is intended for human consumption or is
32 likely to be consumed, whether inhaled, absorbed, or ingested by
33 any other means, including, but not limited to, a cigarette, a
34 cigar, pipe tobacco, chewing tobacco, snuff, or snus;

35 (b) Any vapor-generating electronic device and any
36 substances that may be aerosolized or vaporized by such device,
37 whether or not the substance contains nicotine; or

38 (c) Any component, part, or accessory of a product
39 described in paragraph (a) or paragraph (b), whether or not any



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40 of these contain tobacco or nicotine, including, but not limited
41 to, filters, rolling papers, blunt or hemp wraps, and pipes.

42
43 The term does not include drugs, devices, or combination
44 products authorized for sale by the United States Food and Drug
45 Administration, as those terms are defined in the Federal Food,
46 Drug, and Cosmetic Act ~~loose tobacco leaves, and products made~~
47 ~~from tobacco leaves, in whole or in part, and cigarette~~
48 ~~wrappers, which can be used for smoking, sniffing, or chewing.~~

49 (7) "Vapor-generating electronic device" means any product
50 that employs an electronic, chemical, or mechanical means
51 capable of producing vapor or aerosol from a nicotine product or
52 any other substance, including, but not limited to, an
53 electronic cigarette, electronic cigar, electronic cigarillo,
54 electronic pipe, or other similar device or product; any
55 replacement cartridge for such device; and any other container
56 of nicotine in a solution or other substance form intended to be
57 used with or within an electronic cigarette, an electronic
58 cigar, an electronic cigarillo, an electronic pipe, a vape pen,
59 an electronic hookah, or other similar device or product. The
60 term includes any component, part, or accessory of the device
61 and also includes any substance intended to be aerosolized or
62 vaporized during the use of the device, whether or not the
63 substance contains nicotine.

64
65 The term does not include drugs, devices, or combination
66 products authorized for sale by the United States Food and Drug
67 Administration, as those terms are defined in the Federal Food,
68 Drug, and Cosmetic Act ~~"Any person under the age of 18" does not~~



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69 ~~include any person under the age of 18 who:~~

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

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

74 ~~(c) Is otherwise emancipated by a court of competent~~
75 ~~jurisdiction and released from parental care and responsibility;~~
76 ~~or~~

77 ~~(d) Is acting in his or her scope of lawful employment with~~
78 ~~an entity licensed under the provisions of chapter 210 or this~~
79 ~~chapter.~~

80 Section 4. Paragraph (a) of subsection (2) of section
81 569.003, Florida Statutes, is amended to read:

82 569.003 Retail tobacco products dealer permits;
83 application; qualifications; fees; renewal; duplicates.—

84 (2) (a) Permits may be issued only to persons who are 21 ~~18~~
85 years of age or older or to corporations the officers of which
86 are 21 ~~18~~ years of age or older.

87 Section 5. Subsections (1) and (2) of section 569.007,
88 Florida Statutes, are amended to read:

89 569.007 Sale or delivery of tobacco products;
90 restrictions.—

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

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

96 (b) Sales from a vending machine are prohibited under ~~the~~
97 ~~provisions of paragraph (1)(a)~~ and are only permissible from a



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98 machine that is located in an establishment that prohibits
99 persons under 21 years of age on the licensed premises at all
100 times equipped with an operational lockout device which is under
101 the control of the dealer or the dealer's agent or employee who
102 directly regulates the sale of items through the machine by
103 triggering the lockout device to allow the dispensing of one
104 tobacco product. The lockout device must include a mechanism to
105 prevent the machine from functioning if the power source for the
106 lockout device fails or if the lockout device is disabled, and a
107 mechanism to ensure that only one tobacco product is dispensed
108 at a time.

109 ~~(2) The provisions of subsection (1) shall not apply to an~~
110 ~~establishment that prohibits persons under 18 years of age on~~
111 ~~the licensed premises.~~

112 Section 6. Section 569.101, Florida Statutes, is amended to
113 read:

114 569.101 Selling, delivering, bartering, furnishing, or
115 giving tobacco products to persons under 21 ~~18~~ years of age;
116 criminal penalties; defense.-

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

120 (2) Any person who violates subsection (1) commits a
121 misdemeanor of the second degree, punishable as provided in s.
122 775.082 or s. 775.083. However, any person who violates
123 subsection (1) for a second or subsequent time within 1 year of
124 the first violation, commits a misdemeanor of the first degree,
125 punishable as provided in s. 775.082 or s. 775.083.

126 (3) A person charged with a violation of subsection (1) has



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127 a complete defense if, at the time the tobacco product was sold,
128 delivered, bartered, furnished, or given:

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

131 (b) The appearance of the buyer or recipient was such that
132 a prudent person would believe the buyer or recipient to be 21
133 ~~18~~ years of age or older; and

134 (c) Such person carefully checked a driver license or an
135 identification card issued by this state or another state of the
136 United States, a passport, or a United States armed services
137 identification card presented by the buyer or recipient and
138 acted in good faith and in reliance upon the representation and
139 appearance of the buyer or recipient in the belief that the
140 buyer or recipient was 21 ~~18~~ years of age or older.

141 (4) A person must verify by means of identification
142 specified in paragraph (3)(c) that a person purchasing a tobacco
143 product is not under 21 years of age. Such verification is not
144 required for any person over the age of 29.

145 Section 7. Section 877.112, Florida Statutes, is repealed.

146 Section 8. Paragraphs (a) and (b) of subsection (5) of
147 section 210.095, Florida Statutes, are amended to read:

148 210.095 Mail order, Internet, and remote sales of tobacco
149 products; age verification.—

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

153 (a) Include as part of the shipping documents, in a clear
154 and conspicuous manner, the following statement: "Tobacco
155 Products: Florida law prohibits shipping to individuals under 21



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156 ~~18~~ years of age and requires the payment of all applicable
157 taxes.”

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

160 1. The individual submitting the order for the delivery
161 sale or another adult who resides at the individual's address to
162 sign his or her name to accept delivery of the shipping
163 container. Proof of the legal minimum purchase age of the
164 individual accepting delivery is required only if the individual
165 appears to be under 30 ~~27~~ years of age.

166 2. Proof that the individual is either the addressee or the
167 adult designated by the addressee, in the form of a valid,
168 government-issued identification card bearing a photograph of
169 the individual who signs to accept delivery of the shipping
170 container.

171
172 If the person accepting a purchase order for a delivery sale
173 delivers the tobacco products without using a delivery service,
174 the person must comply with all of the requirements of this
175 section which apply to a delivery service. Any failure to comply
176 with a requirement of this section constitutes a violation
177 thereof.

178 Section 9. Section 569.0075, Florida Statutes, is amended
179 to read:

180 569.0075 Gift of sample tobacco products prohibited.—The
181 gift of sample tobacco products to any person under the age of
182 21 ~~18~~ by an entity licensed or permitted under the provisions of
183 chapter 210 or this chapter, or by an employee of such entity,
184 is prohibited and is punishable as provided in s. 569.101.



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185 Section 10. Subsection (1), paragraphs (b) and (c) of
186 subsection (2), and subsection (3) of section 569.008, Florida
187 Statutes, are amended to read:

188 569.008 Responsible retail tobacco products dealers;
189 qualifications; mitigation of disciplinary penalties; diligent
190 management and supervision; presumption.—

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

195 (2) To qualify as a responsible retail tobacco products
196 dealer, the dealer must establish and implement procedures
197 designed to ensure that the dealer's employees comply with the
198 provisions of this chapter. The dealer must provide a training
199 program for the dealer's employees which addresses the use and
200 sale of tobacco products and which includes at least the
201 following topics:

202 (b) Methods of recognizing and handling customers under 21
203 ~~18~~ years of age.

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

207 (3) In determining penalties under s. 569.006, the division
208 may mitigate penalties imposed against a dealer because of an
209 employee's illegal sale of a tobacco product to a person under
210 21 ~~18~~ years of age if the following conditions are met:

211 (a) The dealer is qualified as a responsible dealer under
212 this section.

213 (b) The dealer provided the training program required under



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214 subsection (2) to that employee before the illegal sale
215 occurred.

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

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

221 Section 11. Section 569.11, Florida Statutes, is amended to
222 read:

223 569.11 Possession, misrepresenting age ~~or military service~~
224 to purchase, and purchase of tobacco products by persons under
225 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
226 disposition of fines.-

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

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

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

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

241 (2) It is unlawful for any person under 21 ~~18~~ years of age
242 to misrepresent his or her age ~~or military service~~ for the



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243 purpose of inducing a dealer or an agent or employee of the
244 dealer to sell, give, barter, furnish, or deliver any tobacco
245 product, or to purchase, or attempt to purchase, any tobacco
246 product from a person or a vending machine. Any person under 21
247 ~~18~~ years of age who violates this subsection commits a
248 noncriminal violation as provided in s. 775.08(3), punishable
249 by:

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

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

256
257 Any second or subsequent violation not within the 12-week period
258 after the first violation is punishable as provided for a first
259 violation.

260 (3) Any person under 21 ~~18~~ years of age cited for
261 committing a noncriminal violation under this section must sign
262 and accept a civil citation indicating a promise to appear
263 before the county court or comply with the requirement for
264 paying the fine and must attend a school-approved anti-tobacco
265 program, if locally available. If a fine is assessed for a
266 violation of this section, the fine must be paid within 30 days
267 after the date of the citation or, if a court appearance is
268 mandatory, within 30 days after the date of the hearing.

269 (4) A person charged with a noncriminal violation under
270 this section must appear before the county court or comply with
271 the requirement for paying the fine. The court, after a hearing,



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272 shall make a determination as to whether the noncriminal
273 violation was committed. If the court finds the violation was
274 committed, it shall impose an appropriate penalty as specified
275 in subsection (1) or subsection (2). A person who participates
276 in community service shall be considered an employee of the
277 state for the purpose of chapter 440, for the duration of such
278 service.

279 (5) (a) If a person under 21 ~~18~~ years of age is found by the
280 court to have committed a noncriminal violation under this
281 section and that person has failed to complete community
282 service, pay the fine as required by paragraph (1) (a) or
283 paragraph (2) (a), or attend a school-approved anti-tobacco
284 program, if locally available, the court may direct the
285 Department of Highway Safety and Motor Vehicles to withhold
286 issuance of or suspend the driver license or driving privilege
287 of that person for a period of 30 consecutive days.

288 (b) If a person under 21 ~~18~~ years of age is found by the
289 court to have committed a noncriminal violation under this
290 section and that person has failed to pay the applicable fine as
291 required by paragraph (1) (b) or paragraph (2) (b), the court may
292 direct the Department of Highway Safety and Motor Vehicles to
293 withhold issuance of or suspend the driver license or driving
294 privilege of that person for a period of 45 consecutive days.

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



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301 penalties received by a county court pursuant to this section
302 shall remain with the clerk of the county court to cover
303 administrative costs.

304 Section 12. Paragraph (b) of subsection (2) and subsection
305 (3) of section 569.12, Florida Statutes, are amended to read:

306 569.12 Jurisdiction; tobacco product enforcement officers
307 or agents; enforcement.-

308 (2)

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

314 (3) A correctional probation officer as defined in s.
315 943.10(3) is authorized to issue a citation to a person under
316 the age of 21 ~~18~~ when, based upon personal investigation, the
317 officer has reasonable cause to believe that the person has
318 committed a civil infraction in violation of s. 569.11.

319 Section 13. Section 569.14, Florida Statutes, is amended to
320 read:

321 569.14 Posting of a sign stating that the sale of tobacco
322 products to persons under 21 ~~18~~ years of age is unlawful;
323 enforcement; penalty.-

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

327

328 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE
329 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS



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330 REQUIRED FOR PURCHASE.

331

332 ~~(2) A dealer that sells tobacco products and nicotine~~
333 ~~products or nicotine dispensing devices, as defined in s.~~
334 ~~877.112, may use a sign that substantially states the following:~~

335

336 ~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR~~
337 ~~NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE~~
338 ~~OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED~~
339 ~~FOR PURCHASE.~~

340

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

343 ~~(3) The division shall make available to dealers of tobacco~~
344 ~~products signs that meet the requirements of subsection (1) or~~
345 ~~subsection (2).~~

346 (3)~~(4)~~ Any dealer that sells tobacco products shall provide
347 at the checkout counter in a location clearly visible to the
348 dealer or the dealer's agent or employee instructional material
349 in a calendar format or similar format to assist in determining
350 whether a person is of legal age to purchase tobacco products.
351 This point of sale material must contain substantially the
352 following language:

353

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

357

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



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359 may use card readers, scanners, or other electronic or automated
360 systems that can verify whether a person is of legal age to
361 purchase tobacco products. Failure to comply with the provisions
362 contained in this subsection shall result in imposition of
363 administrative penalties as provided in s. 569.006.

364 ~~(4)~~ (5) The division, through its agents and inspectors,
365 shall enforce this section.

366 ~~(5)~~ (6) Any person who fails to comply with subsection (1)
367 is guilty of a misdemeanor of the second degree, punishable as
368 provided in s. 775.082 or s. 775.083.

369 Section 14. Subsections (3) and (4) of section 569.19,
370 Florida Statutes, are amended to read:

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

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

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

382 Section 15. This act shall take effect October 1, 2020, if
383 SB ___ or similar legislation is adopted in the same legislative
384 session or an extension thereof and becomes a law.

385
386 ===== T I T L E A M E N D M E N T =====

387 And the title is amended as follows:



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388 Delete everything before the enacting clause
389 and insert:

390 A bill to be entitled
391 An act relating to tobacco and nicotine products;
392 amending s. 210.15, F.S.; revising the age limits for
393 permits relating to cigarettes; amending s. 386.212,
394 F.S.; revising age and time restrictions relating to
395 the prohibition of smoking and vaping near school
396 property; amending s. 569.002, F.S.; revising the
397 definition of the term "tobacco products"; defining
398 the term "vapor-generating electronic device";
399 deleting the term "any person under the age of 18";
400 amending s. 569.003, F.S.; revising the age limits for
401 retail tobacco products dealer permits; amending s.
402 569.007, F.S.; revising prohibitions on the sale of
403 tobacco products from vending machines; conforming
404 provisions to federal law; amending s. 569.101, F.S.;
405 requiring that the age of persons purchasing tobacco
406 products be verified under certain circumstances;
407 repealing s. 877.112, F.S., relating to nicotine
408 products and nicotine dispensing devices; amending ss.
409 210.095, 569.0075, 569.008, 569.11, 569.12, 569.14,
410 and 569.19, F.S.; conforming provisions to federal
411 law; conforming provisions to changes made by the act;
412 providing a contingent effective date.