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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2020	.	
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The Committee on Appropriations (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 39 - 330

and insert:

Section 2. Subsections (1) and (3) of section 386.212, Florida Statutes, are amended to read:

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

(1) It is unlawful for any person under 21 ~~18~~ years of age to smoke tobacco or vape in, on, or within 1,000 feet of the



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11 real property comprising a public or private elementary, middle,  
12 or secondary school ~~between the hours of 6 a.m. and midnight.~~  
13 This section does not apply to any person occupying a moving  
14 vehicle or within a private residence.

15 (3) Any person issued a citation pursuant to this section  
16 shall be deemed to be charged with a civil infraction punishable  
17 by a maximum civil penalty not to exceed \$25, or 50 hours of  
18 community service and, for persons under 18 years of age ~~or,~~  
19 ~~where available,~~ successful completion of a school-approved  
20 anti-tobacco or anti-vaping "alternative to suspension" program.

21 Section 3. Present subsections (3) through (6) of section  
22 569.002, Florida Statutes, are redesignated as subsections (4)  
23 through (7), respectively, a new subsection (3) is added to that  
24 section, and present subsections (6) and (7) of section 569.002,  
25 Florida Statutes, are amended to read:

26 569.002 Definitions.—As used in this chapter, the term:

27 (3) "Liquid nicotine product" means a tobacco product in  
28 liquid form composed of nicotine and other chemicals or  
29 substances which is sold or offered for sale for use with a  
30 vapor-generating electronic device.

31 (7)(6) "Tobacco products" includes:

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

37 (b) Any component, part, or accessory of a product  
38 described in paragraph (a), whether or not any of these contain  
39 tobacco or nicotine, including, but not limited to, filters,



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40 rolling papers, blunt or hemp wraps, and pipes.

41  
42 The term does not include drugs, devices, or combination  
43 products authorized for sale by the United States Food and Drug  
44 Administration, as those terms are defined in the Federal Food,  
45 Drug, and Cosmetic Act ~~loose tobacco leaves, and products made~~  
46 ~~from tobacco leaves, in whole or in part, and cigarette~~  
47 ~~wrappers, which can be used for smoking, sniffing, or chewing.~~

48 ~~(7) "Any person under the age of 18" does not include any~~  
49 ~~person under the age of 18 who:~~

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

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

54 ~~(c) Is otherwise emancipated by a court of competent~~  
55 ~~jurisdiction and released from parental care and responsibility;~~  
56 ~~or~~

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

60 Section 4. Paragraph (a) of subsection (2) of section  
61 569.003, Florida Statutes, is amended to read:

62 569.003 Retail tobacco products dealer permits;  
63 application; qualifications; fees; renewal; duplicates.—

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

67 Section 5. Subsections (1) and (2) of section 569.007,  
68 Florida Statutes, are amended, and a new subsection (5) is added



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69 to that section, to read:

70 569.007 Sale or delivery of tobacco products;  
71 restrictions.—

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

75 1. ~~(a)~~ When under the direct control or line of sight of the  
76 dealer or the dealer's agent or employee; or

77 2. ~~(b)~~ Sales from a vending machine are prohibited under  
78 subparagraph 1. the provisions of paragraph (1) (a) and are only  
79 permissible from a machine that is located in an establishment  
80 that prohibits persons under 21 years of age on the licensed  
81 premises at all times.

82 (b) Sales of vapor-generating electronic devices and liquid  
83 nicotine products, other than as authorized under subparagraph  
84 (a)1., are permissible only if a dealer implements an age  
85 verification procedure that:

86 1. Before accepting an order for delivery, verifies that  
87 the purchaser is at least 21 years of age using a commercially  
88 available database, or an aggregate of databases, which is  
89 regularly used for the purpose of age and identify verification;  
90 and

91 2. Employs a second-step age verification to secure  
92 delivery for every order by requiring the signature of the  
93 purchaser upon delivery and verifying that the credit card or  
94 debit card used for the purchase has been issued in the  
95 purchaser's name and that the delivery address is associated  
96 with the purchaser's credit card or debit card ~~equipped with an~~  
97 operational lockout device which is ~~under the control of the~~



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98 ~~dealer or the dealer's agent or employee who directly regulates~~  
99 ~~the sale of items through the machine by triggering the lockout~~  
100 ~~device to allow the dispensing of one tobacco product. The~~  
101 ~~lockout device must include a mechanism to prevent the machine~~  
102 ~~from functioning if the power source for the lockout device~~  
103 ~~fails or if the lockout device is disabled, and a mechanism to~~  
104 ~~ensure that only one tobacco product is dispensed at a time.~~

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

108 (5) (a) A person may not sell, deliver, barter, furnish, or  
109 give, directly or indirectly, flavored liquid nicotine products  
110 to any other person. For the purposes of this subsection, the  
111 term "flavored liquid nicotine product" means a liquid nicotine  
112 product containing a natural or artificial constituent or  
113 additive that causes the liquid or its vapor to have a  
114 distinguishable taste or aroma other than tobacco or menthol,  
115 including, but not limited to, fruit, chocolate, vanilla, honey,  
116 candy, cocoa, a dessert, an alcoholic beverage, an herb or  
117 spice, or any combination thereof.

118 (b) This subsection does not apply to the sale, shipment,  
119 or transport of any product that receives a marketing order  
120 issued by the United States Food and Drug Administration under  
121 21 U.S.C. s. 387j.

122 Section 6. Section 569.101, Florida Statutes, is amended to  
123 read:

124 569.101 Selling, delivering, bartering, furnishing, or  
125 giving tobacco products to persons under 21 ~~18~~ years of age;  
126 criminal penalties; defense.-



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

130 (2) Any person who violates subsection (1) commits a  
131 misdemeanor of the second degree, punishable as provided in s.  
132 775.082 or s. 775.083. However, any person who violates  
133 subsection (1) for a second or subsequent time within 1 year of  
134 the first violation, commits a misdemeanor of the first degree,  
135 punishable as provided in s. 775.082 or s. 775.083.

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

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

141 (b) The appearance of the buyer or recipient was such that  
142 a prudent person would believe the buyer or recipient to be 21  
143 ~~18~~ years of age or older; and

144 (c) Such person carefully checked a driver license or an  
145 identification card issued by this state or another state of the  
146 United States, a passport, or a United States armed services  
147 identification card presented by the buyer or recipient and  
148 acted in good faith and in reliance upon the representation and  
149 appearance of the buyer or recipient in the belief that the  
150 buyer or recipient was 21 ~~18~~ years of age or older.

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

155 Section 7. Section 569.11, Florida Statutes, is amended to



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156 read:

157 569.11 Possession, misrepresenting age ~~or military service~~  
158 to purchase, and purchase of tobacco products by persons under  
159 21 ~~18~~ years of age prohibited; penalties; jurisdiction;  
160 disposition of fines.—

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

165 (a) For a first violation, 16 hours of community service  
166 or, instead of community service, a \$25 fine. In addition, if  
167 the person is under 18 years of age, the person must attend a  
168 school-approved anti-vaping or anti-tobacco program, ~~if locally~~  
169 ~~available;~~ or

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

172

173 Any second or subsequent violation not within the 12-week period  
174 after the first violation is punishable as provided for a first  
175 violation.

176 (2) It is unlawful for any person under 21 ~~18~~ years of age  
177 to misrepresent his or her age ~~or military service~~ for the  
178 purpose of inducing a dealer or an agent or employee of the  
179 dealer to sell, give, barter, furnish, or deliver any tobacco  
180 product, or to purchase, or attempt to purchase, any tobacco  
181 product from a person or a vending machine. Any person under 21  
182 ~~18~~ years of age who violates this subsection commits a  
183 noncriminal violation as provided in s. 775.08(3), punishable  
184 by:



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185 (a) For a first violation, 16 hours of community service  
186 or, instead of community service, a \$25 fine and, in addition,  
187 if the person is under 18 years of age, the person must attend a  
188 school-approved anti-vaping or anti-tobacco program,~~if~~  
189 ~~available;~~ or

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

192  
193 Any second or subsequent violation not within the 12-week period  
194 after the first violation is punishable as provided for a first  
195 violation.

196 (3) Any person under 21 ~~18~~ years of age cited for  
197 committing a noncriminal violation under this section must sign  
198 and accept a civil citation indicating a promise to appear  
199 before the county court or comply with the requirement for  
200 paying the fine and, if the person is under 18 years of age,  
201 must attend a school-approved anti-vaping or anti-tobacco  
202 program,~~if locally available.~~ If a fine is assessed for a  
203 violation of this section, the fine must be paid within 30 days  
204 after the date of the citation or, if a court appearance is  
205 mandatory, within 30 days after the date of the hearing.

206 (4) A person charged with a noncriminal violation under  
207 this section must appear before the county court or comply with  
208 the requirement for paying the fine. The court, after a hearing,  
209 shall make a determination as to whether the noncriminal  
210 violation was committed. If the court finds the violation was  
211 committed, it shall impose an appropriate penalty as specified  
212 in subsection (1) or subsection (2). A person who participates  
213 in community service shall be considered an employee of the





214 state for the purpose of chapter 440, for the duration of such  
215 service.

216 (5) (a) If a person under 21 ~~18~~ years of age is found by the  
217 court to have committed a noncriminal violation under this  
218 section and that person has failed to complete community  
219 service, pay the fine as required by paragraph (1) (a) or  
220 paragraph (2) (a), or, if the person is under 18 years of age,  
221 attend a school-approved anti-vaping or anti-tobacco program,~~if~~  
222 ~~locally available,~~ the court may direct the Department of  
223 Highway Safety and Motor Vehicles to withhold issuance of or  
224 suspend the driver license or driving privilege of that person  
225 for a period of 30 consecutive days.

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

233 (6) Eighty percent of all civil penalties received by a  
234 county court pursuant to this section shall be remitted by the  
235 clerk of the court to the Department of Revenue for transfer to  
236 the Department of Education to provide for teacher training and  
237 for research and evaluation to reduce and prevent the use of  
238 tobacco products by children. The remaining 20 percent of civil  
239 penalties received by a county court pursuant to this section  
240 shall remain with the clerk of the county court to cover  
241 administrative costs.

242 Section 8. Section 877.112, Florida Statutes, is repealed.



243 Section 9. Paragraphs (a) and (b) of subsection (5) and  
244 paragraphs (e) and (g) of subsection (8) of section 210.095,  
245 Florida Statutes, are amended to read:

246 210.095 Mail order, Internet, and remote sales of tobacco  
247 products; age verification.—

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

251 (a) Include as part of the shipping documents, in a clear  
252 and conspicuous manner, the following statement: "Tobacco  
253 Products: Florida law prohibits shipping to individuals under 21  
254 ~~18~~ years of age and requires the payment of all applicable  
255 taxes."

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

258 1. The individual submitting the order for the delivery  
259 sale or another adult who resides at the individual's address to  
260 sign his or her name to accept delivery of the shipping  
261 container. Proof of the legal minimum purchase age of the  
262 individual accepting delivery is required only if the individual  
263 appears to be under 30 ~~27~~ years of age.

264 2. Proof that the individual is either the addressee or the  
265 adult designated by the addressee, in the form of a valid,  
266 government-issued identification card bearing a photograph of  
267 the individual who signs to accept delivery of the shipping  
268 container.

269  
270 If the person accepting a purchase order for a delivery sale  
271 delivers the tobacco products without using a delivery service,



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272 the person must comply with all of the requirements of this  
273 section which apply to a delivery service. Any failure to comply  
274 with a requirement of this section constitutes a violation  
275 thereof.

276 (8)

277 (e) A person who, in connection with a delivery sale,  
278 delivers tobacco products on behalf of a delivery service to an  
279 individual who is not an adult commits a misdemeanor of the  
280 second ~~third~~ degree, punishable as provided in s. 775.082 or s.  
281 775.083.

282 (g) An individual who is not an adult and who knowingly  
283 violates any provision of this section commits a misdemeanor of  
284 the second ~~third~~ degree, punishable as provided in s. 775.082 or  
285 s. 775.083.

286 Section 10. Section 569.0075, Florida Statutes, is amended  
287 to read:

288 569.0075 Gift of sample tobacco products prohibited.—The  
289 gift of sample tobacco products to any person under the age of  
290 21 ~~18~~ by an entity licensed or permitted under the provisions of  
291 chapter 210 or this chapter, or by an employee of such entity,  
292 is prohibited and is punishable as provided in s. 569.101.

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

296 569.008 Responsible retail tobacco products dealers;  
297 qualifications; mitigation of disciplinary penalties; diligent  
298 management and supervision; presumption.—

299 (1) The Legislature intends to prevent the sale of tobacco  
300 products to persons under 21 ~~18~~ years of age and to encourage



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301 retail tobacco products dealers to comply with responsible  
302 practices in accordance with this section.

303 (2) To qualify as a responsible retail tobacco products  
304 dealer, the dealer must establish and implement procedures  
305 designed to ensure that the dealer's employees comply with the  
306 provisions of this chapter. The dealer must provide a training  
307 program for the dealer's employees which addresses the use and  
308 sale of tobacco products and which includes at least the  
309 following topics:

310 (b) Methods of recognizing and handling customers under 21  
311 ~~18~~ years of age.

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

315 (3) In determining penalties under s. 569.006, the division  
316 may mitigate penalties imposed against a dealer because of an  
317 employee's illegal sale of a tobacco product to a person under  
318 21 ~~18~~ years of age if the following conditions are met:

319 (a) The dealer is qualified as a responsible dealer under  
320 this section.

321 (b) The dealer provided the training program required under  
322 subsection (2) to that employee before the illegal sale  
323 occurred.

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

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

329 Section 12. Paragraph (b) of subsection (2), subsection



330 (3), and paragraph (g) of subsection (4) of section 569.12,  
331 Florida Statutes, are amended to read:

332 569.12 Jurisdiction; tobacco product enforcement officers  
333 or agents; enforcement.-

334 (2)

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

340 (3) A correctional probation officer as defined in s.  
341 943.10(3) is authorized to issue a citation to a person under  
342 the age of 21 ~~18~~ when, based upon personal investigation, the  
343 officer has reasonable cause to believe that the person has  
344 committed a civil infraction in violation of s. 569.11.

345 (4) A citation issued to any person violating the  
346 provisions of s. 569.11 shall be in a form prescribed by the  
347 Division of Alcoholic Beverages and Tobacco of the Department of  
348 Business and Professional Regulation and shall contain:

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

354 ===== T I T L E A M E N D M E N T =====

355 And the title is amended as follows:

356 Delete lines 7 - 21

357 and insert:

358 property; revising civil penalties; amending s.



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359 569.002, F.S.; defining the term "liquid nicotine  
360 product"; revising the definition of the term "tobacco  
361 products"; deleting the term "any person under the age  
362 of 18"; amending s. 569.003, F.S.; revising the age  
363 limits for retail tobacco products dealer permits;  
364 amending s. 569.007, F.S.; revising prohibitions on  
365 the sale of tobacco products from vending machines;  
366 providing requirements for the delivery of vapor-  
367 generating electronic devices and liquid nicotine  
368 products; conforming provisions to federal law;  
369 prohibiting a person from selling, delivering,  
370 bartering, furnishing, or giving flavored liquid  
371 nicotine products to any other person; defining the  
372 term "flavored liquid nicotine product"; providing  
373 applicability; amending s. 569.101, F.S.; requiring  
374 that the age of persons purchasing tobacco products be  
375 verified under certain circumstances; amending s.  
376 569.11, F.S.; revising civil penalties; conforming  
377 provisions to federal law; conforming provisions to  
378 changes made by the act; repealing s. 877.112, F.S.,  
379 relating to nicotine products and nicotine dispensing  
380 devices; amending s. 210.095, F.S.; conforming  
381 provisions to federal law; making technical changes;  
382 amending ss. 569.0075, 569.008, 569.12, 569.14, and  
383 569.19, F.S.; conforming