

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/CS/SB 810

INTRODUCER: Appropriations Committee; Innovation, Industry, and Technology Committee; Health Policy Committee; and Senators Simmons, Flores, and Mayfield

SUBJECT: Tobacco and Nicotine Products

DATE: February 21, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Williams</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 810:

- Increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age.
- Repeals exceptions allowing persons in the military and emancipated minors to possess or purchase tobacco products under current law.
- Prohibits smoking and vaping by any person under 21 years of age on or near school property, regardless of hours of the day.
- Limits the sale of tobacco products through a vending machine to a location that prohibits persons under 21 years of age on the premises.
- Requires age verification before a sale or delivery to a person under 30 years of age. (This complies with recently enacted federal law.)
- Requires a two-step age verification for sales and deliveries of vape and liquid nicotine products that are not conducted under the direct control or line of sight of the retail dealer.
- Prohibits the sale of flavored liquid nicotine products (other than tobacco or menthol flavors), and provides an exception for such products if the FDA issues a marketing order to permit the product to be sold.
- Adds anti-vaping education as an option for persons under 18 years of age charged with under-age violations relating to vape product purchases and possession.
- Incorporates conforming provisions.

The bill will have indeterminate insignificant fiscal impact related to the regulatory responsibilities of the Department of Business and Professional Regulation.

The effective date of the bill is October 1, 2020, contingent upon the passage of the linked fee bill CS/SB 1394 or similar legislation adopted in the same legislative session or an extension thereof.

II. Present Situation:

Regulation of Tobacco Products

The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under ch. 569, F.S.

Section 569.002, F.S., provides definitions of terms in the context of the regulation of tobacco products under ch. 569, F.S. Subsection (6) defines the term “tobacco products” to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Subsection (7) specifies that the term “any person under the age of 18” does not include any person under age 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

Section 569.003, F.S., relates to retail tobacco products dealer permits, the permit application, qualifications, fees, renewals, and duplicates. Subsection (2) stipulates that permits may only be issued to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. The division is authorized to refuse to issue a permit to any person, firm, association, or corporation whose permit has been revoked; to any corporation with an officer who has had his or her permit revoked; or to any person who is or has been an officer of a corporation whose permit has been revoked.

The fee for an annual permit is established in rule by the division at an amount to cover the regulatory costs of the program, not to exceed \$50. The proceeds of the fee are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, internet, and other remote sales of tobacco products, including age verification requirements, all of which is generally referred to as “delivery sales.” It also defines 10 relevant terms.

Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.¹

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.² Before making sales or shipping orders, entities must provide specific notice to the division as to shipper and receiver, with monthly reporting.³ There are requirements specific to purchase orders.⁴

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:⁵

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and penalties in s. 569.101, F.S., (prohibiting the sale,

¹ Section 210.095(5), F.S.

² *Id.*

³ Section 210.095(6), F.S.

⁴ Section 210.095(7), F.S.

⁵ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco product) apply to s. 210.095, F.S., relating to the delivery of tobacco products to persons under the age of 18.⁶

Section 210.15, F.S., relates to permits for the sale of specific tobacco products. Among the requirements for the issuance of such a permit is the provision found in paragraph (b) of subsection (2) to require that permits may be issued only to persons of good moral character, who are not less than 18 years of age. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 18 years of age.

Tobacco Products and Minors

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.⁷

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.⁸

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.008, F.S., provides a process for a retail tobacco product dealer to mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age.⁹ The process encourages retail tobacco product dealers to comply with responsible practices. The division may mitigate penalties if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer's employees comply with ch. 569, F.S., such as employee training;
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; or

⁶ See *supra*, notes 10, 11, and 14 and accompanying text.

⁷ Section 569.007(1), F.S.

⁸ Section 569.007(2) and (3), F.S.

⁹ The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.

- The sale was made through a vending machine equipped with an operational lock-out device.¹⁰

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.¹¹ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.¹²

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification¹³ upon which the person relied in good faith.¹⁴

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products:

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second or subsequent violation within 12 weeks of the first violation is punishable with a \$25 fine.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.¹⁵

Eighty percent of all civil penalties received by a county court under s. 569.11, F.S., must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.¹⁶

Section 569.12, F.S., provides enforcement authority to full-time, part-time, and auxiliary law enforcement officers for the provisions of ch. 569, F.S. The section also authorizes a county or municipality to designate certain of its employees or agents as tobacco product enforcement officers within specified guidelines. Such enforcement officers are authorized to issue a citation to a person under 18 years of age based on a reasonable cause to believe that a civil infraction

¹⁰ Section 569.008(3), F.S.

¹¹ *Supra* note 5.

¹² Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹³ Identification includes carefully checking “a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.” *See* s. 569.101(3)(c), F.S.

¹⁴ Section 569.101(3), F.S.

¹⁵ Section 569.11(1), F.S.

¹⁶ Section 569.11(6), F.S.

has been committed. Similar authority is provided for correctional probation officers. Details are provided as to the required elements of the citation.

Retail tobacco product dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.¹⁷

Section 569.19, F.S., requires the division to annually provide to the Legislature and the Governor, by December 31, a progress report on its enforcement actions specific to the: number and results of compliance visits, number of violations for failure of a retailer to hold a valid license, number of violations of selling tobacco products to persons under age 18, results of administrative hearings on these issues, and number of persons under age 18 cited for violations of underage purchases and sanctions imposed as a result of a citation.

Section 386.212, F.S., in the Florida Clean Indoor Air Act, prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6:00 a.m. and midnight.¹⁸ A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.¹⁹

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the division’s penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 18 years of age, the guidelines provide:

- 1st occurrence -- \$500 fine.
- 2nd occurrence -- \$1,000 fine.
- 3rd occurrence -- \$2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence -- revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.²⁰

¹⁷ Section 569.14, F.S.

¹⁸ Section 386.212(1), F.S.

¹⁹ Section 386.212(3), F.S.

²⁰ Fla. Admin. Code R. 61A-2.022(1) (2019).

National Minimum Age of Sale of Tobacco Products

As part of the federal budget revisions adopted in December 2019 and signed into law on December 20, 2019, the minimum age for the sale of tobacco products is now 21 years of age.²¹ The specific tobacco provisions in the budget document amended section 906(d) of the Federal Food, Drug, and Cosmetic Act to increase the federal minimum age to purchase tobacco products from 18 to 21, and to add a provision that it is unlawful for any retailer to sell a tobacco product to any person younger than age 21. The provisions also require the FDA to update its applicable tobacco regulations within specified timelines.

As part of this rule update process, the FDA is to update the relevant age verification requirements to require age verification for individuals under age 30 (as opposed to the current age verification threshold for individuals under age 27).

III. Effect of Proposed Changes:

Smoking and Vaping Prohibited Near School Property; Penalties

Section 2 amends s. 386.212, F.S., relating to smoking and vaping on or near school property and related penalties, to prohibit smoking and vaping by persons under the age of 21 during any hour of day, on public or private school property or within 1,000 feet of such property. Under current law, that prohibition applies only to persons under 18 years of age between the hours of 6:00 a.m. and midnight. Current law and the bill provide an exception to this prohibition for any person occupying a moving vehicle or within a private residence. Persons under 18 years of age who are issued a citation for violation of this provision have as part of their penalty the requirement to complete a school-approved anti-tobacco or anti-vaping “alternative to suspension” program.

Definitions of Primary Terms

Section 3 amends s. 569.002, F.S., which provides definitions specific to the regulation of tobacco products, to:

- Define the term “liquid nicotine product” as a tobacco product in liquid form composed of nicotine and other chemicals or substances which is sold or offered for sale for use with a vapor-generating electronic device.
- Redefine the term “tobacco products” in subsection (7) as including:
 - Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
 - Any component, part, or accessory of a product described above whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

²¹ See the “Further Consolidated Appropriations Act, 2020,” Rules Committee print 116-44, Text of the House Amendment to the Senate Amendment to H.R. 1865, December 16, 2019, beginning at page 1492 of 1773, available at <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR1865SA-RCP116-44.PDF> (last visited Jan. 25, 2020).

The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

- Delete the definition of the term “any person under the age of 18,” which exempts persons in the military and emancipated minors from the definition, to permit such persons to possess or purchase tobacco products under current law.

Sales Restrictions

Section 1 amends s. 210.15 (1)(b), F.S., relating to permits for the sale of tobacco products, to increase the minimum age for the issuance of such permits from 18 years of age to 21 years of age.

Section 5 amends s. 569.007(1) and (2), F.S., to modify the general restrictions on the sale or delivery of tobacco products. The bill reflects the increase in the age for the purchase of tobacco products to at least 21 years of age from 18 years of age. Under the bill, sales of tobacco products from a vending machine are only permissible from a machine that is located in an establishment that prohibits persons under age 21 on the licensed premises at all times.

Subsection (1) is further amended to require a two-step age verification for sales and deliveries of vape and liquid nicotine products that are not conducted under the direct control or line of sight of the retail dealer. Step one requires verification that the purchaser is at least age 21 before accepting an order for delivery and step two requires a signature of the purchaser upon delivery.

Subsection (5) is added and prohibits the sale of flavored liquid nicotine products (other than tobacco or menthol) and provides an exception for such products if the FDA issues a marketing order to permit the product to be sold. “Flavored liquid nicotine products” is defined as a liquid nicotine product containing a natural or artificial constituent or additive that causes the liquid or its vapor to have a distinguishable taste or aroma other than tobacco or menthol, including, but not limited to, fruit, chocolate, vanilla, honey, candy, cocoa, a dessert, an alcoholic beverage, an herb or spice, or any combination thereof.

Section 6 amends s. 569.101, F.S., relating to the prohibition and penalties against the sale, delivery, barter, furnishing, or giving of tobacco products to an under-age person, to increase in the age for lawful purchase of tobacco products to 21 years of age from 18 years of age.

Section 7 amends s. 569.11, F.S., relating to the prohibition on the possession of tobacco products by minors, to reflect the increase in the minimum age from 18 years of age to 21 years of age. This section is amended to provide that persons under 18 years of age who violate related provisions under this section must complete a school-approved anti-tobacco or anti-vaping “alternative to suspension.” The section is also amended to delete reference to military service in the context of age of purchase, since the bill separately removes an exception to age limits for tobacco purchase or possession by members of the active duty or reserve military.

Section 8 repeals s. 877.112, F.S., to eliminate the general restrictions on the sale or delivery of tobacco products, nicotine dispensing devices, and nicotine products to persons under the age of 18. Many of these provisions are incorporated into the provisions of ch. 569, F.S., by the linked

bill, CS/CS/SB 1394, which amends the definition for the term “tobacco products” to include vapor-generating electronic devices.

Section 9 amends s. 210.095(5)(a) and (b), F.S., relating to mail order, Internet, and remote sales of tobacco products, and age verification related for such sales. The bill revises the labeling requirement for shipped tobacco products to indicate that Florida law prohibits shipping tobacco products to individuals under 21 years of age, rather than 18 years of age. Proof of legal minimum purchase age of the individual accepting delivery is required if the individual appears to be under 30 years of age, rather than the current 27 years of age. (This latter provision is modified to ensure conformity with recent federal law provisions.²²)

The bill also amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree and deletes the incorrect reference to a misdemeanor of the third degree.

Conforming Provisions

Sections 4, 10, 11, 12, 13, and 14 amend ss. 569.003(2)(a), 569.0075, 569.008, 569.12(2)(b) and (3), 569.14 and 569.19(3) and (4), F.S., respectively, to incorporate conforming provisions to reflect the increase in the minimum age for the purchase or sale of tobacco and nicotine products from 18 years of age to 21 years of age.

Effective Date

Section 15 provides an effective date of October 1, 2020, contingent upon the passage of CS/CS/SB 1394 being adopted in the same legislative session or an extension thereof and becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²² *Supra* note 34.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Retail dealers of vapor-generating electronic devices, such as electronic cigarettes, will be required to obtain a retail tobacco product dealer permit. Prohibiting the sale of flavored liquid nicotine products may reduce sales, which may cause a loss of revenue to the businesses that sell those products.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) may incur indeterminate expenses related to personnel costs or modification of operational priorities needed to accommodate the additional licensure of dealers of vapor-generating electronic devices, which may be offset by a regulatory fee, to be applied via a linked bill (CS/CS/SB 1394).

The DBPR indicates that the bill will require modifications to the department's regulatory data system and related devices used by inspection staff. The department indicates that these modifications can be implemented using existing resources.²³

Prohibiting the sale of flavored liquid nicotine products may reduce sales, which may have a potential indeterminate decrease in revenues received by the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/CS/SB 1394 by Senator Simmons (Fees)

CS/CS/SB 1394 by Senator Simmons amends the definition of the term "tobacco products" in s. 569.002(7), F.S., to include vapor-generating electronic devices and products (vaping products). By defining vaping products as tobacco products, CS/CS/SB 1394 imposes a permit fee on retail dealers of vaping products because such persons are required to pay a \$50 fee for a retail tobacco dealer permit.²⁴

²³ Department of Business and Professional Regulation, *Senate Bill 810 Analysis* (December 9, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).

²⁴ See s. 569.003(1)(c), F.S.

Age of Tobacco Purchase in Other States

As of September 18, 2019, 18 states have raised the tobacco purchase age to 21 years of age, along with Washington, DC, and over 500 localities.²⁵ Some of the localities are in states that subsequently enacted statewide laws. Collectively, these laws now cover over half of the U.S. population. The strength of state and local laws, such as their enforcement and penalties, varies substantially.

Those states and the effective date of their adoption of the restrictive provisions are as follow:

State and Effective Date	State and Effective Date
Hawaii (effective 1/1/16)	Arkansas (effective 9/1/19)
California (effective 6/9/16)	Texas (effective 9/1/19)
New Jersey (effective 11/1/17)	Vermont (effective 9/1/19)
Oregon (effective 1/1/18)	Connecticut (effective 10/1/19)
Maine (effective 7/1/18)	Maryland (effective 10/1/19)
Massachusetts (effective 12/31/18)	Ohio (effective 10/17/19)
Illinois (effective 7/1/19)	New York (effective 11/13/19)
Virginia (effective 7/1/19)	Washington (effective 1/1/20)
Delaware (effective 7/16/19)	Utah (effective 7/1/21)

The following are among other jurisdictions that have raised their age for possession of tobacco products to 21 years of age: New York City, Chicago, San Francisco, San Antonio, Boston, Cincinnati, Cleveland, Columbus, and Kansas City (in Kansas and Missouri), and Washington, D.C. In Florida, Alachua County and the City of Fort Lauderdale have raised their minimum age for purchase of tobacco products to 21 years of age.

Age Restrictions on Youth Access to Electronic Cigarettes in Other States

As of September 15, 2019, all states and the District of Columbia (with the exception of Pennsylvania) have laws that restrict youth access to electronic cigarettes, or e-cigarettes. In this context, *e-cigarette* broadly refers to any product, and its component parts and accessories, that contains nicotine and/or other substances intended for use in the form of an aerosol, often referred to as vapor. In 18 states, the restriction is set at age 21. In four states, the restriction is set at age 19. In 28 states, the restriction is set at age 18. At least one state (Utah) is on a path to increase the age restriction one year at a time to age 21 over a few years. There are certain exceptions and exemptions that are applicable within any given state.²⁶

²⁵ See Campaign for Tobacco-Free Kids, States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, *available at* https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (last visited Jan. 25, 2020).

²⁶ See “Youth Access to E-Cigarettes, States with Laws Restricting Youth Access to E-Cigarettes, Enacted as of September 15, 2019,” Public Health Law Center at Mitchell Hamline School of Law, *available at* <https://www.publichealthlawcenter.org/sites/default/files/States-with-Laws-Restricting-Youth-Access-to-ECigarettes-September152019.pdf> (last visited Jan. 25, 2020).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.095, 210.15, 386.212, 569.002, 569.003, 569.007, 569.0075, 569.008, 569.101, 569.11, 569.12, 569.14, and 569.19.

This bill repeals section 877.112 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on February 20, 2020:

The committee substitute:

- Prohibits the sale of flavored liquid nicotine products (other than tobacco or menthol), and provides an exception for such products if the FDA issues a marketing order to permit the product to be sold.
- Requires a two-step age verification for sales and deliveries of vape and liquid nicotine products that are not conducted under the direct control or line of sight of the retail dealer.
- Adds anti-vaping education as an option for persons under 18 years of age charged with under-age violations relating to vape product purchases and possession.

CS/CS by Innovation, Industry, and Technology on February 3, 2020:

The CS/CS:

- Removes from the bill the provision amending s. 569.002(6), F.S., revising the term “tobacco products” to include vapor-generating electronic devices (vaping products).
- Corrects a scrivener’s error in ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree, and delete the incorrect reference to a misdemeanor of the third degree.
- Links the bill to SB 1394 or similar legislation to make the effective date of CS/CS/SB 810 contingent upon the passage of CS/SB 1394 being adopted in the same legislative session or an extension thereof.

CS by Health Policy on January 21, 2020:

The CS revises the bill to:

- Use the term and definition for “vapor-generating electronic device” from the Florida Constitution’s prohibition against indoor vaping to provide a consistency of terms and to adapt the term to include the cartridges or containers of nicotine or other substances used with a vaping device.
- Apply the prohibition against smoking and vaping within 1,000 feet of school property to persons under 21 years of age during all hours of day (instead of to persons under 18 years of age between the hours of 6 a.m. and midnight.)

- Require age verification before a sale or delivery to a person under 30 years of age. This complies with new federal law.

The CS removes from the bill provisions that:

- Exempt retailers who only sell vaping devices and products from the fee (\$50) required for a retail tobacco dealer permit.
- Decriminalize, and revise the applicable penalties, for the prohibition against the sale, delivery, barter, or furnishing of tobacco products to a person under the age of 21.
- Repeal the current prohibitions against the possession of tobacco and vaping products by persons under the minimum age of lawful possession.
- Require the DBPR to conduct enhanced compliance checks of retail establishments.
- Prohibit deliveries of tobacco products to consumers.

B. Amendments:

None.