

By Senator Simmons

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1 A bill to be entitled
2 An act relating to tobacco and nicotine products;
3 providing a short title; amending s. 210.095, F.S.;
4 deleting and redefining terms; defining the terms
5 " distributor " and " electronic smoking device ";
6 restricting delivery sales of tobacco products to
7 certain entities; prohibiting delivery sales directly
8 to unlicensed persons; prohibiting a person from
9 aiding or assisting another person in certain
10 violations; conforming provisions to changes made by
11 the act; amending s. 386.212, F.S.; deleting age and
12 time restrictions relating to the prohibition of
13 smoking and vaping near school property; amending s.
14 569.002, F.S.; defining the term " electronic smoking
15 device "; revising the definition of the term " tobacco
16 products " to include additional products; replacing
17 the term " any person under the age of 18 " with " any
18 person under the age of 21 "; revising exemptions;
19 amending s. 569.003, F.S.; conforming provisions to
20 changes made by the act; revising the conditions under
21 which the Division of Alcoholic Beverages and Tobacco
22 may refuse to issue retail tobacco products dealer
23 permits; exempting certain entities from fees
24 associated with such permits; amending s. 569.005,
25 F.S.; revising the fines for certain noncriminal
26 violations; amending s. 569.006, F.S.; requiring
27 revenues from certain fines to be used for specified
28 purposes; requiring the division to deposit such
29 revenues in the Alcoholic Beverage and Tobacco Trust

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30 Fund rather than the General Revenue Fund; amending s.
31 569.007, F.S.; revising the age limitation of persons
32 to whom it is unlawful to sell or deliver tobacco
33 products; revising the conditions under which sales of
34 tobacco products from a vending machine are
35 authorized; requiring a dealer or a dealer's agent to
36 require proof of age of tobacco product purchasers;
37 amending s. 569.0075, F.S.; revising the age under
38 which the gift of sample tobacco products to a person
39 by certain entities is prohibited; amending s.
40 569.008, F.S.; revising legislative intent to reflect
41 that the Legislature intends to prevent the sale of
42 tobacco products to persons under a specified age;
43 conforming provisions to changes made by the act;
44 deleting an authorization for the division to mitigate
45 penalties imposed against a dealer for certain
46 violations; revising what constitutes prima facie
47 evidence of a lack of due diligence by a dealer under
48 certain circumstances; amending s. 569.101, F.S.;

49 revising the age limitation that applies to the sale,
50 delivery, bartering, furnishing, or giving of tobacco
51 products; conforming provisions to changes made by the
52 act; revising civil penalties; deleting criminal
53 penalties; revising the elements of a complete defense
54 for violations relating to selling, delivering,
55 bartering, furnishing, or giving tobacco products to
56 persons under a specified age; amending s. 569.11,
57 F.S.; deleting a provision that prohibits persons
58 under a specified age from possessing a tobacco

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59 product; conforming provisions to changes made by the
60 act; revising the age limitation that applies to
61 unlawful misrepresentation of age for certain
62 purposes; conforming provisions to changes made by the
63 act; deleting provisions relating to requirements for
64 persons cited for committing certain noncriminal
65 violations; amending s. 569.12, F.S.; deleting
66 provisions authorizing tobacco product enforcement
67 officers and correctional probation officers to issue
68 citations under certain circumstances; requiring that
69 dealers be subject to certain compliance checks;
70 amending ss. 569.14 and 569.19, F.S.; conforming
71 provisions to changes made by the act; repealing s.
72 877.112, F.S., relating to nicotine products and
73 nicotine dispensing devices; providing an effective
74 date.

75

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

77

78 Section 1. This act may be cited as the "Tobacco 21 Act."

79 Section 2. Section 210.095, Florida Statutes, is amended to
80 read:

81 210.095 Mail order, Internet, and remote sales of tobacco
82 products; age verification.—

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

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

86 ~~(b) "Consumer" means a person in this state who comes into~~
87 ~~possession of any tobacco product subject to the tax imposed by~~

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88 ~~this chapter and who, at the time of possession, is not a~~
89 ~~distributor intending to sell or distribute the tobacco product,~~
90 ~~a retailer, or a wholesaler.~~

91 (a)~~(e)~~ "Delivery sale" means any sale of tobacco products
92 to a retailer, wholesale dealer, distributing agent,
93 distributor, importer, or exporter ~~consumer~~ in this state for
94 which:

95 1. The retailer, wholesale dealer, distributing agent,
96 distributor, importer, or exporter ~~consumer~~ submits the order
97 for the sale by telephonic or other voice transmission, mail,
98 delivery service, or the Internet or other online service; or

99 2. The tobacco products are delivered by use of mail or a
100 delivery service.

101 (b)~~(d)~~ "Delivery service" means any person engaged in the
102 commercial delivery of letters, packages, or other containers.

103 (c) "Distributor" has the same meaning as in s. 210.25.

104 (d) "Electronic smoking device" has the same meaning as in
105 s. 569.002.

106 ~~(e)~~ "Legal minimum purchase age" means the minimum age at
107 which an individual may legally purchase tobacco products in
108 this state.

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

111 (e)~~(g)~~ "Retailer" means any person engaged in the business
112 of selling tobacco products to ultimate consumers ~~who is not a~~
113 ~~licensed distributor but who is in possession of tobacco~~
114 ~~products subject to tax under this chapter for the purposes of~~
115 ~~selling the tobacco products to consumers.~~

116 ~~(h)~~ "Shipping container" means a container in which tobacco

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117 ~~products are shipped in connection with a delivery sale.~~

118 ~~(i) "Shipping document" means a bill of lading, airbill,~~
119 ~~United States Postal Service form, or any other document used to~~
120 ~~verify the undertaking by a delivery service to deliver letters,~~
121 ~~packages, or other containers.~~

122 ~~(f)~~ (j) "Tobacco products" has the same meaning as in s.
123 569.002 means all cigarettes, smoking tobacco, snuff, fine-cut
124 chewing tobacco, cut and granulated tobacco, cavendish, and plug
125 or twist tobacco.

126 (2) Licensed retailers, licensed wholesale dealers,
127 licensed distributing agents, licensed distributors, licensed
128 importers, and licensed exporters may accept delivery sales of
129 tobacco products in this state. Delivery sales directly to
130 unlicensed persons are prohibited.

131 (3) A person may not, with knowledge or reason to know of
132 the violation, aid or assist another person in a violation of
133 this section.

134 ~~(a) A sale of tobacco products constituting a delivery sale~~
135 ~~pursuant to paragraph (1)(c) is a delivery sale regardless of~~
136 ~~whether the person accepting the order for the delivery sale is~~
137 ~~located inside or outside this state.~~

138 ~~(b) A retailer must obtain a license from the division~~
139 ~~pursuant to the requirements of this chapter before accepting an~~
140 ~~order for a delivery sale.~~

141 ~~(c) A person may not make a delivery sale of tobacco~~
142 ~~products to any individual who is not an adult.~~

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

145 ~~1. The age verification requirements set forth in~~

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- 146 subsection ~~(3)~~.
- 147 ~~2. The disclosure requirements set forth in subsection (4).~~
- 148 ~~3. The shipping requirements set forth in subsection (5).~~
- 149 ~~4. The registration and reporting requirements set forth in~~
- 150 ~~subsection (6).~~
- 151 ~~5. The tax collection requirements set forth in subsection~~
- 152 ~~(7).~~
- 153 ~~6. The licensing and tax stamp requirements set forth in~~
- 154 ~~this chapter which apply to sales of tobacco products occurring~~
- 155 ~~entirely in this state.~~
- 156 ~~7. All laws of this state generally applicable to sales of~~
- 157 ~~tobacco products occurring entirely in this state which impose~~
- 158 ~~excise taxes and assessments.~~
- 159 ~~(3) A person may not mail, ship, or otherwise deliver~~
- 160 ~~tobacco products in connection with an order for a delivery sale~~
- 161 ~~unless, before the first delivery to the consumer, the person~~
- 162 ~~accepting the order for the delivery sale:~~
- 163 ~~(a) Obtains from the individual submitting the order a~~
- 164 ~~certification that includes:~~
- 165 ~~1. Reliable confirmation that the individual is an adult;~~
- 166 ~~and~~
- 167 ~~2. A statement signed by the individual in writing and~~
- 168 ~~under penalty of perjury which:~~
- 169 ~~a. Certifies the address and date of birth of the~~
- 170 ~~individual; and~~
- 171 ~~b. Confirms that the individual wants to receive delivery~~
- 172 ~~sales from a tobacco company and understands that, under the~~
- 173 ~~laws of this state, the following actions are illegal:~~
- 174 ~~(I) Signing another individual's name to the certification;~~

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175 ~~(II) Selling tobacco products to individuals under the~~
176 ~~legal minimum purchase age; and~~

177 ~~(III) Purchasing tobacco products, if the person making the~~
178 ~~purchase is under the legal minimum purchase age.~~

179 ~~(b) Makes a good faith effort to verify the information~~
180 ~~contained in the certification provided by the individual~~
181 ~~pursuant to paragraph (a) against a commercially available~~
182 ~~database that may be reasonably relied upon for accurate age~~
183 ~~information or obtains a photocopy or other image of a valid~~
184 ~~government-issued identification card stating the date of birth~~
185 ~~or age of the individual.~~

186 ~~(c) Provides to the individual, via electronic mail or~~
187 ~~other means, a notice meeting the requirements of subsection~~
188 ~~(4).~~

189 ~~(d) If an order for tobacco products is made pursuant to an~~
190 ~~advertisement on the Internet, receives payment for the delivery~~
191 ~~sale from the consumer by a credit or debit card issued in the~~
192 ~~name of the consumer, or by personal or company check of the~~
193 ~~consumer.~~

194 ~~(e) Imposes a two-carton minimum on each order of~~
195 ~~cigarettes, and requires payment for the purchase of any tobacco~~
196 ~~product to be made by personal or company check of the purchaser~~
197 ~~or the purchaser's credit card or debit card. Payment by money~~
198 ~~order or cash may not be received or permitted. The person~~
199 ~~accepting the order for delivery sale shall submit, to each~~
200 ~~credit card acquiring company with which the person has credit~~
201 ~~card sales, identification information in an appropriate form~~
202 ~~and format so that the words "tobacco product" may be printed in~~
203 ~~the purchaser's credit card statement when a purchase of a~~

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204 ~~tobacco product is made by credit card payment.~~

205 ~~(f) Makes a telephone call after 5 p.m. to the purchaser~~
206 ~~confirming the order before shipping the tobacco products. The~~
207 ~~telephone call may be a person to person call or a recorded~~
208 ~~message. The person accepting the order for delivery sale is not~~
209 ~~required to speak directly with a person and may leave a message~~
210 ~~on an answering machine or through voice mail.~~

211 ~~In addition to the requirements of this subsection, a~~
212 ~~person accepting an order for a delivery sale may request that a~~
213 ~~consumer provide an electronic mail address.~~

214 ~~(4) The notice described in paragraph (3) (c) must include~~
215 ~~prominent and clearly legible statements that sales of tobacco~~
216 ~~products are:~~

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

218 ~~(b) Restricted to those individuals who provide verifiable~~
219 ~~proof of age in accordance with subsection (3).~~

220 ~~(c) Taxable under this chapter.~~

221
222 ~~The notice must include an explanation of how each tax has been,~~
223 ~~or is to be, paid with respect to the delivery sale.~~

224 ~~(5) Each person who mails, ships, or otherwise delivers~~
225 ~~tobacco products in connection with an order for a delivery sale~~
226 ~~must:~~

227 ~~(a) Include as part of the shipping documents, in a clear~~
228 ~~and conspicuous manner, the following statement: "Tobacco~~
229 ~~Products: Florida law prohibits shipping to individuals under 18~~
230 ~~years of age and requires the payment of all applicable taxes."~~

231 ~~(b) Use a method of mailing, shipping, or delivery which~~
232 ~~obligates the delivery service to require:~~

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233 ~~1. The individual submitting the order for the delivery~~
234 ~~sale or another adult who resides at the individual's address to~~
235 ~~sign his or her name to accept delivery of the shipping~~
236 ~~container. Proof of the legal minimum purchase age of the~~
237 ~~individual accepting delivery is required only if the individual~~
238 ~~appears to be under 27 years of age.~~

239 ~~2. Proof that the individual is either the addressee or the~~
240 ~~adult designated by the addressee, in the form of a valid,~~
241 ~~government issued identification card bearing a photograph of~~
242 ~~the individual who signs to accept delivery of the shipping~~
243 ~~container.~~

244 ~~(c) Provide to the delivery service, if such service is~~
245 ~~used, evidence of full compliance with subsection (7).~~

246
247 ~~If the person accepting a purchase order for a delivery sale~~
248 ~~delivers the tobacco products without using a delivery service,~~
249 ~~the person must comply with all of the requirements of this~~
250 ~~section which apply to a delivery service. Any failure to comply~~
251 ~~with a requirement of this section constitutes a violation~~
252 ~~thereof.~~

253 ~~(6) (a) Before making sales or shipping tobacco products in~~
254 ~~connection with sales, a person shall file with the division a~~
255 ~~statement providing the person's name, trade name, and the~~
256 ~~address of the person's principal place of business, as well as~~
257 ~~any other place of business.~~

258 ~~(b) No later than the 10th day of each month, each person~~
259 ~~who has made a sale or mailed, shipped, or otherwise delivered~~
260 ~~tobacco products in connection with any sale during the previous~~
261 ~~calendar month shall file with the division a memorandum or a~~

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262 ~~copy of the invoice, providing for each sale:~~

263 ~~1. The name and address of the individual who submitted the~~
264 ~~order for the sale.~~

265 ~~2. The name and address of the individual who accepted~~
266 ~~delivery of the tobacco products.~~

267 ~~3. The name and address of the person who accepted the~~
268 ~~order for the sale of the tobacco products.~~

269 ~~4. The name and address of the delivery service and the~~
270 ~~name of the individual making the delivery.~~

271 ~~5. The brand or brands of the tobacco products sold in the~~
272 ~~sale.~~

273 ~~6. The quantity of each brand of tobacco products sold in~~
274 ~~the sale.~~

275 ~~(c) A person may comply with the requirements of this~~
276 ~~subsection by complying with the requirements of 15 U.S.C. s.~~
277 ~~376.~~

278 ~~(d) This section does not apply to sales of tobacco~~
279 ~~products by a licensed distributor or to sales of tobacco~~
280 ~~products by a retailer purchased from a licensed distributor.~~

281 ~~(7) Each person accepting a purchase order for a delivery~~
282 ~~sale shall collect and remit to the division all taxes imposed~~
283 ~~on tobacco products by this state with respect to the delivery~~
284 ~~sale. With respect to cigarettes, the collection and remission~~
285 ~~are not required if the person has obtained proof in the form of~~
286 ~~the presence of applicable tax stamps or tax-exempt stamps, or~~
287 ~~other proof that the taxes have already been paid to this state.~~

288 ~~(4)(8)(a) Except as otherwise provided in this section, a~~
289 ~~violation of this section by a person other than an individual~~
290 ~~who is not an adult is a misdemeanor of the first degree,~~

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291 ~~punishable as provided in s. 775.082 or s. 775.083, and:~~

292 1. For a first violation of this section, a ~~the~~ person
293 shall be fined \$1,000 or five times the retail value of the
294 tobacco products involved in the violation, whichever is
295 greater.

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

300 ~~(b) A person who is an adult and knowingly submits a false~~
301 ~~certification under subsection (3) commits a misdemeanor of the~~
302 ~~first degree, punishable as provided in s. 775.082 or s.~~
303 ~~775.083. For each offense, the person shall be fined \$10,000 or~~
304 ~~five times the retail value of the tobacco products involved in~~
305 ~~the violation, whichever is greater.~~

306 ~~(c) A person who fails to pay any tax required in~~
307 ~~connection with a delivery sale shall pay, in addition to any~~
308 ~~other penalty, a penalty of five times the retail value of the~~
309 ~~tobacco products involved.~~

310 (b)~~(d)~~ Any tobacco products sold or attempted to be sold in
311 a delivery sale not meeting the requirements of this section
312 shall be forfeited to the state pursuant to s. 210.185.

313 ~~(e) A person who, in connection with a delivery sale,~~
314 ~~delivers tobacco products on behalf of a delivery service to an~~
315 ~~individual who is not an adult commits a misdemeanor of the~~
316 ~~third degree, punishable as provided in s. 775.082 or s.~~
317 ~~775.083.~~

318 (c)~~(f)~~ Any fixture, equipment, or other material or
319 personal property on the premises of any person who, with the

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320 intent to defraud this state, mails or ships tobacco products
321 into this state and fails to satisfy any of the requirements of
322 this section is a contraband article within the definition of s.
323 932.701(2)(a)3.

324 ~~(g) An individual who is not an adult and who knowingly~~
325 ~~violates any provision of this section commits a misdemeanor of~~
326 ~~the third degree, punishable as provided in s. 775.082 or s.~~
327 ~~775.083.~~

328 (5)~~(9)~~ The Attorney General, the Attorney General's
329 designee, a state attorney, or any person who holds a permit
330 under 26 U.S.C. s. 5713 may bring an action in the appropriate
331 court in this state to prevent or restrain violations of this
332 section by any person.

333 Section 3. Subsection (1) of section 386.212, Florida
334 Statutes, is amended to read:

335 386.212 Smoking and vaping prohibited near school property;
336 penalty.—

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

343 Section 4. Present subsections (1), (2), and (3) through
344 (6) of section 569.002, Florida Statutes, are redesignated as
345 subsections (2), (3), and (5) through (8), respectively, a new
346 subsection (4) is added to that section, and present subsections
347 (6) and (7) are amended, to read:

348 569.002 Definitions.—As used in this chapter, the term:

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349 (4) "Electronic smoking device" means any device that may
350 be used to deliver any aerosolized or vaporized substance to the
351 person inhaling from the device, including, but not limited to,
352 an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term
353 includes any component, part, or accessory of the device and
354 also includes any substance intended to be aerosolized or
355 vaporized during the use of the device, whether or not the
356 substance contains nicotine.

357
358 The term does not include drugs, devices, or combination
359 products authorized for sale by the U.S. Food and Drug
360 Administration, as those terms are defined in the Federal Food,
361 Drug, and Cosmetic Act.

362 (8)~~(6)~~ "Tobacco products" includes:

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

368 (b) Any electronic smoking device and any substances that
369 may be aerosolized or vaporized by such device, whether or not
370 the substance contains nicotine; or

371 (c) Any component, part, or accessory of a product
372 described in paragraph (a) or paragraph (b), whether or not any
373 of these contain tobacco or nicotine, including, but not limited
374 to, filters, rolling papers, blunt or hemp wraps, and pipes.

375
376 The term does not include drugs, devices, or combination
377 products authorized for sale by the U.S. Food and Drug

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378 Administration, as those terms are defined in the Federal Food,
379 Drug, and Cosmetic Act ~~loose tobacco leaves, and products made~~
380 ~~from tobacco leaves, in whole or in part, and cigarette~~
381 ~~wrappers, which can be used for smoking, sniffing, or chewing.~~

382 (1) ~~(7)~~ "Any person under the age of 21 ~~18~~" does not include
383 any person under the age of 21 ~~18~~ who:

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

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

388 ~~(c) Is otherwise emancipated by a court of competent~~
389 ~~jurisdiction and released from parental care and responsibility;~~
390 ~~or~~

391 (a) ~~(d)~~ Is acting in his or her scope of lawful employment
392 with an entity licensed under the provisions of chapter 210 or
393 this chapter; or

394 (b) Is participating in a compliance check as required by
395 s. 569.12.

396 Section 5. Subsection (2) of section 569.003, Florida
397 Statutes, is amended, and subsection (5) is added to that
398 section, to read:

399 569.003 Retail tobacco products dealer permits;
400 application; qualifications; fees; renewal; duplicates.—

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

404 (b) The division may refuse to issue a permit to any
405 person, firm, association, or corporation the permit of which
406 has been revoked or suspended, to any corporation an officer of

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407 which has had his or her permit revoked or suspended, or to any
408 person who is or has been an officer of a corporation the permit
409 of which has been revoked or suspended. Any permit issued to a
410 firm, association, or corporation prohibited from obtaining a
411 permit under this section shall be revoked by the division.

412 (5) An entity that deals only in tobacco products that are
413 electronic smoking devices; components, parts, or accessories of
414 such devices; or substances that may be aerosolized or vaporized
415 by such devices and that holds or is applying for a retail
416 tobacco product dealer permit is exempt from any fees relating
417 to the permit.

418 Section 6. Subsections (1) and (2) of section 569.005,
419 Florida Statutes, are amended to read:

420 569.005 Operating without a retail tobacco products dealer
421 permit; penalty.—

422 (1) It is unlawful for a person, firm, association, or
423 corporation to deal, at retail, in tobacco products, in any
424 manner, or to allow a tobacco products vending machine to be
425 located on its premises, without having a retail tobacco
426 products dealer permit as required by s. 569.003. A person who
427 violates this section is guilty of a noncriminal violation,
428 punishable by a fine of at least ~~not more than~~ \$500.

429 (2) Any person who violates this section shall be cited for
430 such infraction and shall be cited to appear before the county
431 court. The citation may indicate the time, date, and location of
432 the scheduled hearing and must indicate that the penalty for a
433 noncriminal violation is a fine of at least ~~not more than~~ \$500.

434 Section 7. Section 569.006, Florida Statutes, is amended to
435 read:

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436 569.006 Retail tobacco products dealers; administrative
437 penalties.—The division may suspend or revoke the permit of the
438 dealer upon sufficient cause appearing of the violation of any
439 of the provisions of this chapter, by a dealer or by a dealer's
440 agent or employee. The division may also assess and accept
441 administrative fines of up to \$1,000 against a dealer for each
442 violation. The revenues generated from such fines shall be used
443 to offset the costs of licensing administration, education and
444 training, retail inspections, and unannounced compliance checks,
445 and the division shall deposit all fines collected into the
446 Alcoholic Beverage and Tobacco Trust Fund ~~General Revenue Fund~~
447 as collected. An order imposing an administrative fine becomes
448 effective 15 days after the date of the order. The division may
449 suspend the imposition of a penalty against a dealer,
450 conditioned upon the dealer's compliance with terms the division
451 considers appropriate.

452 Section 8. Subsections (1), (2), and (4) of section
453 569.007, Florida Statutes, are amended to read:

454 569.007 Sale or delivery of tobacco products;
455 restrictions.—

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

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

461 (b) Sales from a vending machine are prohibited under ~~the~~
462 ~~provisions of~~ paragraph (1) (a) and are only permissible from a
463 machine that is located in an establishment that prohibits
464 persons under 21 years of age on the licensed premises at all

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465 ~~times equipped with an operational lockout device which is under~~
466 ~~the control of the dealer or the dealer's agent or employee who~~
467 ~~directly regulates the sale of items through the machine by~~
468 ~~triggering the lockout device to allow the dispensing of one~~
469 ~~tobacco product. The lockout device must include a mechanism to~~
470 ~~prevent the machine from functioning if the power source for the~~
471 ~~lockout device fails or if the lockout device is disabled, and a~~
472 ~~mechanism to ensure that only one tobacco product is dispensed~~
473 ~~at a time.~~

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

477 ~~(3)~~(4) A dealer or a dealer's agent or employee shall ~~may~~
478 require proof of age of a purchaser of a tobacco product before
479 selling the product to that person.

480 Section 9. Section 569.0075, Florida Statutes, is amended
481 to read:

482 569.0075 Gift of sample tobacco products prohibited.—The
483 gift of sample tobacco products to any person under the age of
484 21 ~~18~~ by an entity licensed or permitted under the provisions of
485 chapter 210 or this chapter, or by an employee of such entity,
486 is prohibited and is punishable as provided in s. 569.101.

487 Section 10. Section 569.008, Florida Statutes, is amended
488 to read:

489 569.008 Responsible retail tobacco products dealers;
490 qualifications; ~~mitigation of disciplinary penalties;~~ diligent
491 management and supervision; presumption.—

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

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494 retail tobacco products dealers to comply with responsible
495 practices in accordance with this section.

496 (2) To qualify as a responsible retail tobacco products
497 dealer, the dealer must establish and implement procedures
498 designed to ensure that the dealer's employees comply with the
499 provisions of this chapter. The dealer must provide a training
500 program for the dealer's employees which addresses the use and
501 sale of tobacco products and which includes at least the
502 following topics:

503 (a) Laws covering the sale of tobacco products.

504 (b) Methods of recognizing and handling customers under 21
505 ~~18~~ years of age.

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

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

511 ~~(3) In determining penalties under s. 569.006, the division~~
512 ~~may mitigate penalties imposed against a dealer because of an~~
513 ~~employee's illegal sale of a tobacco product to a person under~~
514 ~~18 years of age if the following conditions are met:~~

515 ~~(a) The dealer is qualified as a responsible dealer under~~
516 ~~this section.~~

517 ~~(b) The dealer provided the training program required under~~
518 ~~subsection (2) to that employee before the illegal sale~~
519 ~~occurred.~~

520 ~~(c) The dealer had no knowledge of that employee's~~
521 ~~violation at the time of the violation and did not direct,~~
522 ~~approve, or participate in the violation.~~

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

525 (3)~~(4)~~ The division shall develop and make available a
526 model tobacco products training program designed to ensure
527 adherence to this act by dealers and their employees which, if
528 followed, will qualify dealers as responsible dealers.

529 (4)~~(5)~~ Dealers shall exercise diligence in the management
530 and supervision of their premises and in the supervision and
531 training of their employees, agents, or servants. In proceedings
532 to impose penalties under s. 569.006, proof that employees,
533 agents, or servants of the dealer, while in the scope of their
534 employment, committed at least three violations of s. 569.101
535 during a 36-month ~~180-day~~ period shall be prima facie evidence
536 of a lack of due diligence by the dealer in the management and
537 supervision of his or her premises and in the supervision and
538 training of employees, agents, officers, or servants.

539 (5)~~(6)~~ The division may consider qualification as a
540 responsible retail tobacco products dealer under this section as
541 evidence that the dealer properly exercised the diligence
542 required under this section.

543 Section 11. Section 569.101, Florida Statutes, is amended
544 to read:

545 569.101 Selling, delivering, bartering, furnishing, or
546 giving tobacco products to persons under 21 ~~18~~ years of age;
547 ~~criminal~~ penalties; defense.—

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

551 (2) Any dealer ~~person~~ who violates subsection (1):

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- 552 (a) For a first time shall pay a minimum fine of \$500;
- 553 (b) For a second time within a 36-month period shall pay a
554 minimum fine of \$750 and may not distribute tobacco products for
555 a minimum of 7 days;
- 556 (c) For a third time within a 36-month period shall pay a
557 minimum fine of \$1,000 and may not distribute tobacco products
558 for a minimum of 30 days; and
- 559 (d) For a fourth and any subsequent violations within a 36-
560 month period shall pay a minimum fine of \$1,000 and may not
561 distribute tobacco products for a period of 3 years.
- 562 (3) Any person found to have violated subsection (1) while
563 acting as a nonmanagement agent or employee of a dealer is
564 subject to noncriminal and nonmonetary penalties, including, but
565 not limited to, education classes, diversion programs, and
566 community service.
- 567 (4) Any person 21 years of age or older who is not a dealer
568 or a dealer's agent or employee and who violates subsection (1)
569 shall pay an administrative fine of \$50 ~~commits a misdemeanor of~~
570 the second degree, punishable as provided in s. 775.082 or s.
571 775.083. However, any person who violates subsection (1) for a
572 second or subsequent time within 1 year of the first violation,
573 ~~commits a misdemeanor of the first degree, punishable as~~
574 ~~provided in s. 775.082 or s. 775.083.~~
- 575 (5)~~(3)~~ A dealer or nonmanagement agent or employee of a
576 dealer person charged with a violation of subsection (1) has a
577 complete defense if, at the time the tobacco product was sold,
578 delivered, bartered, furnished, or given:
- 579 (a) The buyer or recipient falsely evidenced that she or he
580 was 21 ~~18~~ years of age or older;

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581 (b) The appearance of the buyer or recipient was such that
582 a prudent person would believe the buyer or recipient to be 21
583 ~~18~~ years of age or older; and

584 (c) Such person carefully checked a driver license or an
585 identification card issued by this state or another state of the
586 United States or, a passport, ~~or a United States armed services~~
587 ~~identification card~~ presented by the buyer or recipient and
588 acted in good faith and in reliance upon the representation and
589 appearance of the buyer or recipient in the belief that the
590 buyer or recipient was 21 ~~18~~ years of age or older.

591 Section 12. Section 569.11, Florida Statutes, is amended to
592 read:

593 569.11 ~~Possession, Misrepresenting age or military service~~
594 ~~to purchase, and purchase of~~ tobacco products by persons under
595 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
596 disposition of fines.-

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

601 (a) ~~For a first violation, 16 hours of community service~~
602 ~~or, instead of community service, a \$25 fine. In addition, the~~
603 ~~person must attend a school-approved anti-tobacco program, if~~
604 ~~locally available; or~~

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

607
608 ~~Any second or subsequent violation not within the 12-week period~~
609 ~~after the first violation is punishable as provided for a first~~

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610 ~~violation.~~

611 ~~(2)~~ It is unlawful for any person under 21 ~~18~~ years of age
612 to misrepresent his or her age ~~or military service~~ for the
613 purpose of inducing a dealer or an agent or employee of the
614 dealer to sell, give, barter, furnish, or deliver any tobacco
615 product, or to purchase, or attempt to purchase, any tobacco
616 product from a person or a vending machine. Any person under 21
617 ~~18~~ years of age who violates this subsection commits a
618 noncriminal violation as provided in s. 775.08(3), punishable
619 by:

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

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

626

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

630 ~~(3) Any person under 18 years of age cited for committing a~~
631 ~~noncriminal violation under this section must sign and accept a~~
632 ~~civil citation indicating a promise to appear before the county~~
633 ~~court or comply with the requirement for paying the fine and~~
634 ~~must attend a school-approved anti-tobacco program, if locally~~
635 ~~available. If a fine is assessed for a violation of this~~
636 ~~section, the fine must be paid within 30 days after the date of~~
637 ~~the citation or, if a court appearance is mandatory, within 30~~
638 ~~days after the date of the hearing.~~

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639 ~~(4) A person charged with a noncriminal violation under~~
640 ~~this section must appear before the county court or comply with~~
641 ~~the requirement for paying the fine. The court, after a hearing,~~
642 ~~shall make a determination as to whether the noncriminal~~
643 ~~violation was committed. If the court finds the violation was~~
644 ~~committed, it shall impose an appropriate penalty as specified~~
645 ~~in subsection (1) or subsection (2). A person who participates~~
646 ~~in community service shall be considered an employee of the~~
647 ~~state for the purpose of chapter 440, for the duration of such~~
648 ~~service.~~

649 ~~(5) (a) If a person under 18 years of age is found by the~~
650 ~~court to have committed a noncriminal violation under this~~
651 ~~section and that person has failed to complete community~~
652 ~~service, pay the fine as required by paragraph (1) (a) or~~
653 ~~paragraph (2) (a), or attend a school approved anti tobacco~~
654 ~~program, if locally available, the court may direct the~~
655 ~~Department of Highway Safety and Motor Vehicles to withhold~~
656 ~~issuance of or suspend the driver license or driving privilege~~
657 ~~of that person for a period of 30 consecutive days.~~

658 ~~(b) If a person under 18 years of age is found by the court~~
659 ~~to have committed a noncriminal violation under this section and~~
660 ~~that person has failed to pay the applicable fine as required by~~
661 ~~paragraph (1) (b) or paragraph (2) (b), the court may direct the~~
662 ~~Department of Highway Safety and Motor Vehicles to withhold~~
663 ~~issuance of or suspend the driver license or driving privilege~~
664 ~~of that person for a period of 45 consecutive days.~~

665 (2)~~(6)~~ Eighty percent of all civil penalties received by a
666 county court pursuant to this section shall be remitted by the
667 clerk of the court to the Department of Revenue for transfer to

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668 the Department of Education to provide for teacher training and
669 for research and evaluation to reduce and prevent the use of
670 tobacco products by children. The remaining 20 percent of civil
671 penalties received by a county court pursuant to this section
672 shall remain with the clerk of the county court to cover
673 administrative costs.

674 Section 13. Section 569.12, Florida Statutes, is amended to
675 read:

676 569.12 Jurisdiction; tobacco product enforcement officers
677 or agents; enforcement; compliance checks.-

678 (1) In addition to the Division of Alcoholic Beverages and
679 Tobacco of the Department of Business and Professional
680 Regulation, any law enforcement officer certified under s.
681 943.10(1), (6), or (8) shall enforce the provisions of this
682 chapter.

683 (2) ~~(a)~~ A county or municipality may designate certain of
684 its employees or agents as tobacco product enforcement officers.
685 The training and qualifications of the employees or agents for
686 such designation shall be determined by the county or the
687 municipality. Nothing in this section shall be construed to
688 permit the carrying of firearms or other weapons by a tobacco
689 product enforcement agent, nor does designation as a tobacco
690 product enforcement officer provide the employee or agent with
691 the power of arrest or subject the employee or agent to the
692 provisions of ss. 943.085-943.255. Nothing in this section
693 amends, alters, or contravenes the provisions of any state-
694 administered retirement system or any state-supported retirement
695 system established by general law.

696 ~~(b) A tobacco product enforcement officer is authorized to~~

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697 ~~issue a citation to a person under the age of 18 when, based~~
698 ~~upon personal investigation, the officer has reasonable cause to~~
699 ~~believe that the person has committed a civil infraction in~~
700 ~~violation of s. 386.212 or s. 569.11.~~

701 ~~(3) A correctional probation officer as defined in s.~~
702 ~~943.10(3) is authorized to issue a citation to a person under~~
703 ~~the age of 18 when, based upon personal investigation, the~~
704 ~~officer has reasonable cause to believe that the person has~~
705 ~~committed a civil infraction in violation of s. 569.11.~~

706 ~~(4)~~ A citation issued to any person violating the
707 provisions of s. 569.11 shall be in a form prescribed by the
708 Division of Alcoholic Beverages and Tobacco of the Department of
709 Business and Professional Regulation and shall contain:

710 (a) The date and time of issuance.

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

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

714 (d) The facts constituting reasonable cause.

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

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

717 (g) The procedure for the person to follow in order to
718 contest the citation, perform the required community service,
719 attend the required anti-tobacco program, or to pay the civil
720 penalty.

721 (4) Each dealer shall be subject to at least two
722 unannounced compliance checks per year. The division or its
723 authorized designee shall conduct compliance checks by engaging
724 persons between the ages of 18 and 20 to enter the tobacco
725 retail establishment to attempt to purchase tobacco products.

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726 Unannounced follow-up compliance checks of all noncompliant
 727 dealers are required within 3 months of any violation of this
 728 chapter.

729 Section 14. Section 569.14, Florida Statutes, is amended to
 730 read:

731 569.14 Posting of a sign stating that the sale of tobacco
 732 products to persons under 21 ~~18~~ years of age is unlawful;
 733 enforcement; penalty.—

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

737
 738 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE
 739 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
 740 REQUIRED FOR SALE PURCHASE.

741
 742 ~~(2) A dealer that sells tobacco products and nicotine~~
 743 ~~products or nicotine dispensing devices, as defined in s.~~
 744 ~~877.112, may use a sign that substantially states the following:~~

745
 746 ~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR~~
 747 ~~NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE~~
 748 ~~OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED~~
 749 ~~FOR PURCHASE.~~

750
 751 ~~A dealer that uses a sign as described in this subsection meets~~
 752 ~~the signage requirements of subsection (1) and s. 877.112.~~

753 ~~(3)~~ The division shall make available to dealers of tobacco
 754 products signs that meet the requirements of subsection (1) ~~or~~

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755 ~~subsection (2).~~

756 (3)~~(4)~~ Any dealer that sells tobacco products shall provide
757 at the checkout counter in a location clearly visible to the
758 dealer or the dealer's agent or employee instructional material
759 in a calendar format or similar format to assist in determining
760 whether a person is of legal age to purchase tobacco products.
761 This point of sale material must contain substantially the
762 following language:

763

764 IF YOU WERE NOT BORN BEFORE THIS DATE

765 (insert date and applicable year)

766 YOU CANNOT BE SOLD ~~BUY~~ TOBACCO PRODUCTS.

767

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

774 (4)~~(5)~~ The division, through its agents and inspectors,
775 shall enforce this section.

776 (5)~~(6)~~ Any person who fails to comply with subsection (1)
777 is guilty of a misdemeanor of the second degree, punishable as
778 provided in s. 775.082 or s. 775.083.

779 Section 15. Subsections (3) and (4) of section 569.19,
780 Florida Statutes, are amended to read:

781 569.19 Annual report.—The division shall report annually
782 with written findings to the Legislature and the Governor by
783 December 31, on the progress of implementing the enforcement

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784 provisions of this chapter. This must include, but is not
785 limited to:

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

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

792 Section 16. Section 877.112, Florida Statutes, is repealed.

793 Section 17. This act shall take effect October 1, 2020.