

**By** the Committees on Innovation, Industry, and Technology; and Health Policy; and Senators Simmons and Flores

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1                                   A bill to be entitled  
2       An act relating to tobacco and nicotine products;  
3       amending s. 210.15, F.S.; revising the age limits for  
4       permits relating to cigarettes; amending s. 386.212,  
5       F.S.; revising age and time restrictions relating to  
6       the prohibition of smoking and vaping near school  
7       property; amending s. 569.002, F.S.; revising the  
8       definition of the term "tobacco products"; deleting  
9       the term "any person under the age of 18"; amending s.  
10      569.003, F.S.; revising the age limits for retail  
11      tobacco products dealer permits; amending s. 569.007,  
12      F.S.; revising prohibitions on the sale of tobacco  
13      products from vending machines; conforming provisions  
14      to federal law; amending s. 569.101, F.S.; requiring  
15      that the age of persons purchasing tobacco products be  
16      verified under certain circumstances; repealing s.  
17      877.112, F.S., relating to nicotine products and  
18      nicotine dispensing devices; amending s. 210.095,  
19      F.S.; conforming provisions to federal law; making  
20      technical changes; amending ss. 569.0075, 569.008,  
21      569.11, 569.12, 569.14, and 569.19, F.S.; conforming  
22      provisions to federal law; conforming provisions to  
23      changes made by the act; providing a contingent  
24      effective date.

25  
26   Be It Enacted by the Legislature of the State of Florida:

27  
28       Section 1. Paragraph (b) of subsection (1) of section  
29      210.15, Florida Statutes, is amended to read:

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30 210.15 Permits.—

31 (1)

32 (b) Permits shall be issued only to persons of good moral  
33 character, who are not less than 21 ~~18~~ years of age. Permits to  
34 corporations shall be issued only to corporations whose officers  
35 are of good moral character and not less than 21 ~~18~~ years of  
36 age. There shall be no exemptions from the permit fees herein  
37 provided to any persons, association of persons, or corporation,  
38 any law to the contrary notwithstanding.

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

41 386.212 Smoking and vaping prohibited near school property;  
42 penalty.—

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

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

51 569.002 Definitions.—As used in this chapter, the term:

52 (6) "Tobacco products" includes:

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

58 (b) Any component, part, or accessory of a product

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59 described in paragraph (a), whether or not any of these contain  
60 tobacco or nicotine, including, but not limited to, filters,  
61 rolling papers, blunt or hemp wraps, and pipes.

62  
63 The term does not include drugs, devices, or combination  
64 products authorized for sale by the United States Food and Drug  
65 Administration, as those terms are defined in the Federal Food,  
66 Drug, and Cosmetic Act ~~loose tobacco leaves, and products made~~  
67 ~~from tobacco leaves, in whole or in part, and cigarette~~  
68 ~~wrappers, which can be used for smoking, sniffing, or chewing.~~

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

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

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

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

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

81 Section 4. Paragraph (a) of subsection (2) of section  
82 569.003, Florida Statutes, is amended to read:

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

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

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

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

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

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

97 (b) Sales from a vending machine are prohibited under ~~the~~  
98 ~~provisions of paragraph (1)(a) and are only permissible from a~~  
99 ~~machine that is located in an establishment that prohibits~~  
100 ~~persons under 21 years of age on the licensed premises at all~~  
101 ~~times equipped with an operational lockout device which is under~~  
102 ~~the control of the dealer or the dealer's agent or employee who~~  
103 ~~directly regulates the sale of items through the machine by~~  
104 ~~triggering the lockout device to allow the dispensing of one~~  
105 ~~tobacco product. The lockout device must include a mechanism to~~  
106 ~~prevent the machine from functioning if the power source for the~~  
107 ~~lockout device fails or if the lockout device is disabled, and a~~  
108 ~~mechanism to ensure that only one tobacco product is dispensed~~  
109 ~~at a time.~~

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

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

115 569.101 Selling, delivering, bartering, furnishing, or  
116 giving tobacco products to persons under 21 ~~18~~ years of age;

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117 criminal penalties; defense.—

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

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

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

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

132 (b) The appearance of the buyer or recipient was such that  
133 a prudent person would believe the buyer or recipient to be 21  
134 ~~18~~ years of age or older; and

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

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

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

147 Section 8. Paragraphs (a) and (b) of subsection (5) and  
148 paragraphs (e) and (g) of subsection (8) of section 210.095,  
149 Florida Statutes, are amended to read:

150 210.095 Mail order, Internet, and remote sales of tobacco  
151 products; age verification.—

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

155 (a) Include as part of the shipping documents, in a clear  
156 and conspicuous manner, the following statement: "Tobacco  
157 Products: Florida law prohibits shipping to individuals under 21  
158 ~~18~~ years of age and requires the payment of all applicable  
159 taxes."

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

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

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

173  
174 If the person accepting a purchase order for a delivery sale

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175 delivers the tobacco products without using a delivery service,  
176 the person must comply with all of the requirements of this  
177 section which apply to a delivery service. Any failure to comply  
178 with a requirement of this section constitutes a violation  
179 thereof.

180 (8)

181 (e) A person who, in connection with a delivery sale,  
182 delivers tobacco products on behalf of a delivery service to an  
183 individual who is not an adult commits a misdemeanor of the  
184 second ~~third~~ degree, punishable as provided in s. 775.082 or s.  
185 775.083.

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

190 Section 9. Section 569.0075, Florida Statutes, is amended  
191 to read:

192 569.0075 Gift of sample tobacco products prohibited.—The  
193 gift of sample tobacco products to any person under the age of  
194 21 ~~18~~ by an entity licensed or permitted under the provisions of  
195 chapter 210 or this chapter, or by an employee of such entity,  
196 is prohibited and is punishable as provided in s. 569.101.

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

200 569.008 Responsible retail tobacco products dealers;  
201 qualifications; mitigation of disciplinary penalties; diligent  
202 management and supervision; presumption.—

203 (1) The Legislature intends to prevent the sale of tobacco

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204 products to persons under 21 ~~18~~ years of age and to encourage  
205 retail tobacco products dealers to comply with responsible  
206 practices in accordance with this section.

207 (2) To qualify as a responsible retail tobacco products  
208 dealer, the dealer must establish and implement procedures  
209 designed to ensure that the dealer's employees comply with the  
210 provisions of this chapter. The dealer must provide a training  
211 program for the dealer's employees which addresses the use and  
212 sale of tobacco products and which includes at least the  
213 following topics:

214 (b) Methods of recognizing and handling customers under 21  
215 ~~18~~ years of age.

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

219 (3) In determining penalties under s. 569.006, the division  
220 may mitigate penalties imposed against a dealer because of an  
221 employee's illegal sale of a tobacco product to a person under  
222 21 ~~18~~ years of age if the following conditions are met:

223 (a) The dealer is qualified as a responsible dealer under  
224 this section.

225 (b) The dealer provided the training program required under  
226 subsection (2) to that employee before the illegal sale  
227 occurred.

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

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



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233 Section 11. Section 569.11, Florida Statutes, is amended to  
234 read:

235 569.11 Possession, misrepresenting age ~~or military service~~  
236 to purchase, and purchase of tobacco products by persons under  
237 21 ~~18~~ years of age prohibited; penalties; jurisdiction;  
238 disposition of fines.—

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

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

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

249

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

253 (2) It is unlawful for any person under 21 ~~18~~ years of age  
254 to misrepresent his or her age ~~or military service~~ for the  
255 purpose of inducing a dealer or an agent or employee of the  
256 dealer to sell, give, barter, furnish, or deliver any tobacco  
257 product, or to purchase, or attempt to purchase, any tobacco  
258 product from a person or a vending machine. Any person under 21  
259 ~~18~~ years of age who violates this subsection commits a  
260 noncriminal violation as provided in s. 775.08(3), punishable  
261 by:

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

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

268

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

272 (3) Any person under 21 ~~18~~ years of age cited for  
273 committing a noncriminal violation under this section must sign  
274 and accept a civil citation indicating a promise to appear  
275 before the county court or comply with the requirement for  
276 paying the fine and must attend a school-approved anti-tobacco  
277 program, if locally available. If a fine is assessed for a  
278 violation of this section, the fine must be paid within 30 days  
279 after the date of the citation or, if a court appearance is  
280 mandatory, within 30 days after the date of the hearing.

281 (4) A person charged with a noncriminal violation under  
282 this section must appear before the county court or comply with  
283 the requirement for paying the fine. The court, after a hearing,  
284 shall make a determination as to whether the noncriminal  
285 violation was committed. If the court finds the violation was  
286 committed, it shall impose an appropriate penalty as specified  
287 in subsection (1) or subsection (2). A person who participates  
288 in community service shall be considered an employee of the  
289 state for the purpose of chapter 440, for the duration of such  
290 service.

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291 (5) (a) If a person under 21 ~~18~~ years of age is found by the  
292 court to have committed a noncriminal violation under this  
293 section and that person has failed to complete community  
294 service, pay the fine as required by paragraph (1) (a) or  
295 paragraph (2) (a), or attend a school-approved anti-tobacco  
296 program, if locally available, the court may direct the  
297 Department of Highway Safety and Motor Vehicles to withhold  
298 issuance of or suspend the driver license or driving privilege  
299 of that person for a period of 30 consecutive days.

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

307 (6) Eighty percent of all civil penalties received by a  
308 county court pursuant to this section shall be remitted by the  
309 clerk of the court to the Department of Revenue for transfer to  
310 the Department of Education to provide for teacher training and  
311 for research and evaluation to reduce and prevent the use of  
312 tobacco products by children. The remaining 20 percent of civil  
313 penalties received by a county court pursuant to this section  
314 shall remain with the clerk of the county court to cover  
315 administrative costs.

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

318 569.12 Jurisdiction; tobacco product enforcement officers  
319 or agents; enforcement.—

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320 (2)

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

326 (3) A correctional probation officer as defined in s.  
327 943.10(3) is authorized to issue a citation to a person under  
328 the age of 21 ~~18~~ when, based upon personal investigation, the  
329 officer has reasonable cause to believe that the person has  
330 committed a civil infraction in violation of s. 569.11.

331 Section 13. Section 569.14, Florida Statutes, is amended to  
332 read:

333 569.14 Posting of a sign stating that the sale of tobacco  
334 products to persons under 21 ~~18~~ years of age is unlawful;  
335 enforcement; penalty.—

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

339  
340 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE  
341 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS  
342 REQUIRED FOR PURCHASE.

343  
344 ~~(2) A dealer that sells tobacco products and nicotine~~  
345 ~~products or nicotine dispensing devices, as defined in s.~~  
346 ~~877.112, may use a sign that substantially states the following:~~

347  
348 ~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR~~

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349 ~~NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE~~  
350 ~~OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED~~  
351 ~~FOR PURCHASE.~~

352  
353 ~~A dealer that uses a sign as described in this subsection meets~~  
354 ~~the signage requirements of subsection (1) and s. 877.112.~~

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

358 (3)~~(4)~~ Any dealer that sells tobacco products shall provide  
359 at the checkout counter in a location clearly visible to the  
360 dealer or the dealer's agent or employee instructional material  
361 in a calendar format or similar format to assist in determining  
362 whether a person is of legal age to purchase tobacco products.  
363 This point of sale material must contain substantially the  
364 following language:

365  
366 IF YOU WERE NOT BORN BEFORE THIS DATE  
367 (insert date and applicable year)  
368 YOU CANNOT BUY TOBACCO PRODUCTS.

369  
370 Upon approval by the division, in lieu of a calendar a dealer  
371 may use card readers, scanners, or other electronic or automated  
372 systems that can verify whether a person is of legal age to  
373 purchase tobacco products. Failure to comply with the provisions  
374 contained in this subsection shall result in imposition of  
375 administrative penalties as provided in s. 569.006.

376 (4)~~(5)~~ The division, through its agents and inspectors,  
377 shall enforce this section.

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378        (5)~~(6)~~ Any person who fails to comply with subsection (1)  
379 is guilty of a misdemeanor of the second degree, punishable as  
380 provided in s. 775.082 or s. 775.083.

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

383        569.19 Annual report.—The division shall report annually  
384 with written findings to the Legislature and the Governor by  
385 December 31, on the progress of implementing the enforcement  
386 provisions of this chapter. This must include, but is not  
387 limited to:

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

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

394        Section 15. This act shall take effect October 1, 2020, if  
395 SB 1394 or similar legislation is adopted in the same  
396 legislative session or an extension thereof and becomes a law.