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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/RS/2R

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04/22/2021 11:12 AM

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Senator Hutson moved the following:

Senate Amendment (with directory amendment)

Delete lines 290 - 1152

and insert:

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

Section 9. Section 569.004, Florida Statutes, is amended to read:

569.004 Consent to inspection and search without warrant.—
An applicant for a permit, by accepting the permit when issued,



226212

12 agrees that the place or premises covered by the permit is
13 subject to inspection and search without a search warrant by the
14 division or its authorized assistants, and by sheriffs, deputy
15 sheriffs, or police officers, to determine compliance with this
16 chapter, including part II of this chapter if the applicant
17 deals, at retail, in nicotine products within the state or
18 allows a nicotine products vending machine to be located on its
19 premises within the state.

20 Section 10. Section 569.006, Florida Statutes, is amended
21 to read:

22 569.006 Retail tobacco products dealers; administrative
23 penalties.—The division may suspend or revoke the permit of the
24 dealer upon sufficient cause appearing of the violation of any
25 of the provisions of this chapter, including part II of this
26 chapter if the dealer deals, at retail, in nicotine products
27 within the state or allows a nicotine products vending machine
28 to be located on its premises within the state, by a dealer or
29 by a dealer's agent or employee. The division may also assess
30 and accept administrative fines of up to \$1,000 against a dealer
31 for each violation. The division shall deposit all fines
32 collected into the General Revenue Fund as collected. An order
33 imposing an administrative fine becomes effective 15 days after
34 the date of the order. The division may suspend the imposition
35 of a penalty against a dealer, conditioned upon the dealer's
36 compliance with terms the division considers appropriate.

37 Section 11. Subsections (1), (2), and (4) of section
38 569.007, Florida Statutes, are amended to read:

39 569.007 Sale or delivery of tobacco products;
40 restrictions.—



226212

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

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

46 (b) Sales from a vending machine are prohibited under the
47 provisions of paragraph (1) (a) and are only permissible from a
48 machine that is equipped with an operational lockout device
49 which is under the control of the dealer or the dealer's agent
50 or employee who directly regulates the sale of items through the
51 machine by triggering the lockout device to allow the dispensing
52 of one tobacco product. The lockout device must include a
53 mechanism to prevent the machine from functioning if the power
54 source for the lockout device fails or if the lockout device is
55 disabled, and a mechanism to ensure that only one tobacco
56 product is dispensed at a time.

57 (2) The provisions of subsection (1) shall not apply to an
58 establishment that prohibits persons under 21 ~~18~~ years of age on
59 the licensed premises.

60 (4) A dealer or a dealer's agent or employee may require
61 proof of age of a purchaser of a tobacco product before selling
62 the product to that person, unless the purchaser appears to be
63 30 years of age or older.

64 Section 12. Section 569.0075, Florida Statutes, is amended
65 to read:

66 569.0075 Gift of sample tobacco products prohibited.—The
67 gift of sample tobacco products to any person under the age of
68 21 ~~18~~ by an entity licensed or permitted under the provisions of
69 chapter 210 or this part ~~chapter~~, or by an employee of such



226212

70 entity, is prohibited and is punishable as provided in s.
71 569.101.

72 Section 13. Subsection (1), paragraphs (b) and (c) of
73 subsection (2), and subsection (3) of section 569.008, Florida
74 Statutes, are amended to read:

75 569.008 Responsible retail tobacco products dealers;
76 qualifications; mitigation of disciplinary penalties; diligent
77 management and supervision; presumption.—

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

82 (2) To qualify as a responsible retail tobacco products
83 dealer, the dealer must establish and implement procedures
84 designed to ensure that the dealer's employees comply with the
85 provisions of this part ~~chapter~~. The dealer must provide a
86 training program for the dealer's employees which addresses the
87 use and sale of tobacco products and which includes at least the
88 following topics:

89 (b) Methods of recognizing and handling customers under 21
90 ~~18~~ years of age.

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

94 (3) In determining penalties under s. 569.006, the division
95 may mitigate penalties imposed against a dealer because of an
96 employee's illegal sale of a tobacco product to a person under
97 21 ~~18~~ years of age if the following conditions are met:

98 (a) The dealer is qualified as a responsible dealer under



226212

99 this section.

100 (b) The dealer provided the training program required under
101 subsection (2) to that employee before the illegal sale
102 occurred.

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

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

108 Section 14. Section 569.009, Florida Statutes, is amended
109 to read:

110 569.009 Rulemaking authority.—The division shall adopt any
111 rules necessary to administer and enforce the provisions of this
112 part ~~chapter~~.

113 Section 15. Section 569.101, Florida Statutes, is amended
114 to read:

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



226212

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 Section 16. Section 569.11, Florida Statutes, is amended to
143 read:

144 569.11 Possession, misrepresenting age or military service
145 to purchase, and purchase of tobacco products by persons under
146 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
147 disposition of fines.—

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

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

156 (b) For a second or subsequent violation within 12 weeks



226212

157 after the first violation, a \$25 fine.

158

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

162 (2) It is unlawful for any person under 21 ~~18~~ years of age
163 to misrepresent his or her age or military service for the
164 purpose of inducing a dealer or an agent or employee of the
165 dealer to sell, give, barter, furnish, or deliver any tobacco
166 product, or to purchase, or attempt to purchase, any tobacco
167 product from a person or a vending machine. Any person under 21
168 ~~18~~ years of age who violates this subsection commits a
169 noncriminal violation as provided in s. 775.08(3), punishable
170 by:

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

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

177

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

181 (3) Any person under 21 ~~18~~ years of age cited for
182 committing a noncriminal violation under this section must sign
183 and accept a civil citation indicating a promise to appear
184 before the county court or comply with the requirement for
185 paying the fine and must attend a school-approved anti-tobacco



226212

186 program, if locally available. If a fine is assessed for a
187 violation of this section, the fine must be paid within 30 days
188 after the date of the citation or, if a court appearance is
189 mandatory, within 30 days after the date of the hearing.

190 (4) A person charged with a noncriminal violation under
191 this section must appear before the county court or comply with
192 the requirement for paying the fine. The court, after a hearing,
193 shall make a determination as to whether the noncriminal
194 violation was committed. If the court finds the violation was
195 committed, it shall impose an appropriate penalty as specified
196 in subsection (1) or subsection (2). A person who participates
197 in community service shall be considered an employee of the
198 state for the purpose of chapter 440, for the duration of such
199 service.

200 (5) (a) If a person under 21 ~~18~~ years of age is found by the
201 court to have committed a noncriminal violation under this
202 section and that person has failed to complete community
203 service, pay the fine as required by paragraph (1) (a) or
204 paragraph (2) (a), or attend a school-approved anti-tobacco
205 program, if locally available, the court may direct the
206 Department of Highway Safety and Motor Vehicles to withhold
207 issuance of or suspend the driver license or driving privilege
208 of that person for a period of 30 consecutive days.

209 (b) If a person under 21 ~~18~~ years of age is found by the
210 court to have committed a noncriminal violation under this
211 section and that person has failed to pay the applicable fine as
212 required by paragraph (1) (b) or paragraph (2) (b), the court may
213 direct the Department of Highway Safety and Motor Vehicles to
214 withhold issuance of or suspend the driver license or driving



226212

215 privilege of that person for a period of 45 consecutive days.

216 (6) Eighty percent of all civil penalties received by a
217 county court pursuant to this section shall be remitted by the
218 clerk of the court to the Department of Revenue for transfer to
219 the Department of Education to provide for teacher training and
220 for research and evaluation to reduce and prevent the use of
221 tobacco products by children. The remaining 20 percent of civil
222 penalties received by a county court pursuant to this section
223 shall remain with the clerk of the county court to cover
224 administrative costs.

225 Section 17. Section 569.12, Florida Statutes, is amended to
226 read:

227 569.12 Jurisdiction; tobacco product and nicotine product
228 enforcement officers or agents; enforcement.—

229 (1) In addition to the Division of Alcoholic Beverages and
230 Tobacco of the Department of Business and Professional
231 Regulation, any law enforcement officer certified under s.
232 943.10(1), (6), or (8) shall enforce the provisions of this
233 chapter.

234 (2) (a) A county or municipality may designate certain of
235 its employees or agents as tobacco product and nicotine product
236 enforcement officers. The training and qualifications of the
237 employees or agents for such designation shall be determined by
238 the county or the municipality. Nothing in this section shall be
239 construed to permit the carrying of firearms or other weapons by
240 a tobacco product and nicotine product enforcement agent, nor
241 does designation as a tobacco product and nicotine product
242 enforcement officer provide the employee or agent with the power
243 of arrest or subject the employee or agent to the provisions of



226212

244 ss. 943.085-943.255. Nothing in this section amends, alters, or
245 contravenes the provisions of any state-administered retirement
246 system or any state-supported retirement system established by
247 general law.

248 (b) A tobacco product and nicotine product enforcement
249 officer is authorized to issue a citation to a person under the
250 age of 21 ~~18~~ when, based upon personal investigation, the
251 officer has reasonable cause to believe that the person has
252 committed a civil infraction in violation of s. 386.212, ~~or~~ s.
253 569.11, or s. 569.42.

254 (3) A correctional probation officer as defined in s.
255 943.10(3) is authorized to issue a citation to a person under
256 the age of 21 ~~18~~ when, based upon personal investigation, the
257 officer has reasonable cause to believe that the person has
258 committed a civil infraction in violation of s. 569.11 or s.
259 569.42.

260 (4) A citation issued to any person violating the
261 provisions of s. 569.11 or s. 569.42 shall be in a form
262 prescribed by the Division of Alcoholic Beverages and Tobacco of
263 the Department of Business and Professional Regulation and shall
264 contain:

265 (a) The date and time of issuance.

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

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

269 (d) The facts constituting reasonable cause.

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

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

272 (g) The procedure for the person to follow in order to



226212

273 contest the citation, perform the required community service,
274 attend the required anti-tobacco or anti-tobacco and anti-
275 nicotine program, or to pay the civil penalty.

276 Section 18. Section 569.14, Florida Statutes, is amended to
277 read:

278 569.14 Posting of a sign stating that the sale of tobacco
279 products or nicotine products to persons under 21 ~~18~~ years of
280 age is unlawful; enforcement; penalty.—

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

284
285 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE
286 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
287 REQUIRED FOR PURCHASE.

288
289 (2) A dealer that sells tobacco products and nicotine
290 products or nicotine dispensing devices, ~~as defined in s.~~
291 ~~877.112,~~ may use a sign that substantially states the following:

292
293 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR
294 NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE
295 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
296 REQUIRED FOR PURCHASE.

297
298 A dealer that uses a sign as described in this subsection meets
299 the signage requirements of subsection (1) and s. 569.43(1) ~~s.~~
300 ~~877.112.~~

301 (3) The division shall make available to dealers of tobacco



302 products signs that meet the requirements of subsection (1) or
303 subsection (2).

304 (4) Any dealer that sells tobacco products shall provide at
305 the checkout counter in a location clearly visible to the dealer
306 or the dealer's agent or employee instructional material in a
307 calendar format or similar format to assist in determining
308 whether a person is of legal age to purchase tobacco products.
309 This point of sale material must contain substantially the
310 following language:

311
312 IF YOU WERE NOT BORN BEFORE THIS DATE
313 (insert date and applicable year)
314 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS,
315 OR NICOTINE DISPENSING DEVICES.
316

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

323 (5) The division, through its agents and inspectors, shall
324 enforce this section.

325 (6) Any person who fails to comply with subsection (1) is
326 guilty of a misdemeanor of the second degree, punishable as
327 provided in s. 775.082 or s. 775.083.

328 Section 19. Section 569.19, Florida Statutes, is amended to
329 read:

330 569.19 Annual report.—The division shall report annually



226212

331 with written findings to the Legislature and the Governor by
332 December 31, on the progress of implementing the enforcement
333 provisions of this part ~~chapter~~. This must include, but is not
334 limited to:

335 (1) The number and results of compliance visits.

336 (2) The number of violations for failure of a retailer to
337 hold a valid license.

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

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

344 Section 20. Section 569.31, Florida Statutes, is created to
345 read:

346 569.31 Definitions.—As used in this part, the term:

347 (1) “Dealer” is synonymous with the term “retail nicotine
348 products dealer.”

349 (2) “Division” means the Division of Alcoholic Beverages
350 and Tobacco of the Department of Business and Professional
351 Regulation.

352 (3) “Nicotine dispensing device” means any product that
353 employs an electronic, chemical, or mechanical means to produce
354 vapor or aerosol from a nicotine product, including, but not
355 limited to, an electronic cigarette, electronic cigar,
356 electronic cigarillo, electronic pipe, or other similar device
357 or product, any replacement cartridge for such device, and any
358 other container of nicotine in a solution or other form intended
359 to be used with or within an electronic cigarette, electronic



226212

360 cigar, electronic cigarillo, electronic pipe, or other similar
361 device or product.

362 (4) "Nicotine product" means any product that contains
363 nicotine, including liquid nicotine, which is intended for human
364 consumption, whether inhaled, chewed, absorbed, dissolved, or
365 ingested by any means. The term also includes any nicotine
366 dispensing device. The term does not include a:

367 (a) Tobacco product, as defined in s. 569.002;

368 (b) Product regulated as a drug or device by the United
369 States Food and Drug Administration under Chapter V of the
370 Federal Food, Drug, and Cosmetic Act; or

371 (c) Product that contains incidental nicotine.

372 (5) "Permit" is synonymous with the term "retail nicotine
373 products dealer permit."

374 (6) "Retail nicotine products dealer" means the holder of a
375 retail nicotine products dealer permit.

376 (7) "Retail nicotine products dealer permit" means a permit
377 issued by the division under s. 569.32.

378 (8) "Self-service merchandising" means the open display of
379 nicotine products, whether packaged or otherwise, for direct
380 retail customer access and handling before purchase without the
381 intervention or assistance of the dealer or the dealer's owner,
382 employee, or agent. An open display of such products and devices
383 includes the use of an open display unit.

384 (9) "Any person under the age of 21" does not include any
385 person under the age of 21 who:

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

388 (b) Is acting in his or her scope of lawful employment.



226212

389 Section 21. Section 569.315, Florida Statutes, is created
390 to read:

391 569.315 Preemption.—The establishment of the minimum age
392 for purchasing or possessing, and the regulation for the
393 marketing, sale, or delivery of, nicotine products is preempted
394 to the state.

395 Section 22. Section 569.32, Florida Statutes, is created to
396 read:

397 569.32 Retail nicotine products dealer permits;
398 application; qualifications; renewal; duplicates.—

399 (1) (a) Each person, firm, association, or corporation that
400 seeks to deal, at retail, in nicotine products within the state,
401 or to allow a nicotine products vending machine to be located on
402 its premises in the state, must obtain a retail nicotine
403 products dealer permit for each place of business or premises at
404 which nicotine products are sold. Each dealer owning, leasing,
405 furnishing, or operating vending machines through which nicotine
406 products are sold must obtain a permit for each machine and
407 shall post the permit in a conspicuous place on or near the
408 machine; however, if the dealer has more than one vending
409 machine at a single location or if nicotine products are sold
410 both over the counter and through a vending machine at a single
411 location, the dealer need obtain only one permit for that
412 location.

413 (b) Application for a permit must be made on a form
414 furnished by the division and must set forth the name under
415 which the applicant transacts or intends to transact business,
416 the address of the location of the applicant's place of business
417 within the state, and any other information the division



226212

418 requires. If the applicant has or intends to have more than one
419 place of business dealing in nicotine products within the state,
420 a separate application must be made for each place of business.
421 If the applicant is a firm or an association, the application
422 must set forth the names and addresses of the persons
423 constituting the firm or association; if the applicant is a
424 corporation, the application must set forth the names and
425 addresses of the principal officers of the corporation. The
426 application must also set forth any other information prescribed
427 by the division for the purpose of identifying the applicant
428 firm, association, or corporation. The application must be
429 signed and verified by oath or affirmation by the owner, if a
430 sole proprietor, or, if the owner is a firm, association, or
431 partnership, by the members or partners thereof, or, if the
432 owner is a corporation, by an executive officer of the
433 corporation or by a person authorized by the corporation to sign
434 the application, together with the written evidence of this
435 authority.

436 (2) (a) Permits may be issued only to persons who are 21
437 years of age or older or to corporations the officers of which
438 are 21 years of age or older.

439 (b) The division may refuse to issue a permit to any
440 person, firm, association, or corporation the permit of which
441 has been revoked, to any corporation an officer of which has had
442 his or her permit revoked, or to any person who is or has been
443 an officer of a corporation the permit of which has been
444 revoked. Any permit issued to a firm, association, or
445 corporation prohibited from obtaining a permit under this
446 chapter shall be revoked by the division.



226212

447 (3) Upon approval of an application for a permit, the
448 division shall issue to the applicant a permit for the place of
449 business or premises specified in the application. A permit is
450 not assignable and is valid only for the person in whose name
451 the permit is issued and for the place designated in the permit.
452 The permit shall be conspicuously displayed at all times at the
453 place for which issued.

454 Section 23. Section 569.33 Florida Statutes, is created to
455 read:

456 569.33 Consent to inspection and search without warrant.—An
457 applicant for a retail nicotine products dealer permit, by
458 accepting the permit when issued, agrees that the place or
459 premises covered by the permit is subject to inspection and
460 search without a search warrant by the division or its
461 authorized assistants, and by sheriffs, deputy sheriffs, or
462 police officers, to determine compliance with this part.

463 Section 24. Section 569.34, Florida Statutes, is created to
464 read:

465 569.34 Operating without a retail nicotine products dealer
466 permit; penalty.—

467 (1) It is unlawful for a person, firm, association, or
468 corporation to deal, at retail, in nicotine products, in any
469 manner, or to allow a nicotine products vending machine to be
470 located on its premises, without having a retail nicotine
471 product dealer permit as required by s. 569.32. A person who
472 violates this section commits a noncriminal violation,
473 punishable by a fine of not more than \$500.

474 (2) A retail tobacco products dealer, as defined in s.
475 569.002(4), is not required to have a separate or additional



226212

476 retail nicotine products dealer permit to deal, at retail, in
477 nicotine products within the state, or allow a nicotine products
478 vending machine to be located on its premises in the state. Any
479 retail tobacco products dealer that deals, at retail, in
480 nicotine products or allows a nicotine products vending machine
481 to be located on its premises in the state, is subject to, and
482 must be in compliance with, this part.

483 (3) Any person who violates this section shall be cited for
484 such infraction and shall be cited to appear before the county
485 court. The citation may indicate the time, date, and location of
486 the scheduled hearing and must indicate that the penalty for a
487 noncriminal violation is a fine of not more than \$500.

488 (a) A person cited for an infraction under this section
489 may:

- 490 1. Post a \$500 bond; or
491 2. Sign and accept the citation indicating a promise to
492 appear.

493 (b) A person cited for violating this section may:

- 494 1. Pay the fine, either by mail or in person, within 10
495 days after receiving the citation; or
496 2. If the person has posted bond, forfeit the bond by not
497 appearing at the scheduled hearing.

498 (c) If the person pays the fine or forfeits bond, the
499 person is deemed to have admitted violating this section and to
500 have waived the right to a hearing on the issue of commission of
501 the violation. Such admission may not be used as evidence in any
502 other proceeding.

503 (d) The court, after a hearing, shall make a determination
504 as to whether an infraction has been committed. If the



226212

505 commission of an infraction has been proven beyond a reasonable
506 doubt, the court may impose a civil penalty in an amount that
507 may not exceed \$500.

508 (e) If a person is found by the court to have committed the
509 infraction, that person may appeal that finding to the circuit
510 court.

511 Section 25. Section 569.35, Florida Statutes, is created to
512 read:

513 569.35 Retail nicotine product dealers; administrative
514 penalties.—The division may suspend or revoke the permit of a
515 dealer, including the retail tobacco products dealer permit of a
516 retail tobacco products dealer as defined in s. 569.002(4), upon
517 sufficient cause appearing of the violation of any of the
518 provisions of this part, by a dealer, or by a dealer's agent or
519 employee. The division may also assess and accept an
520 administrative fine of up to \$1,000 against a dealer for each
521 violation. The division shall deposit all fines collected into
522 the General Revenue Fund as collected. An order imposing an
523 administrative fine becomes effective 15 days after the date of
524 the order. The division may suspend the imposition of a penalty
525 against a dealer, conditioned upon the dealer's compliance with
526 terms the division considers appropriate.

527 Section 26. Section 569.37, Florida Statutes, is created to
528 read:

529 569.37 Sale or delivery of nicotine products;
530 restrictions.—

531 (1) In order to prevent persons under 21 years of age from
532 purchasing or receiving nicotine products, the sale or delivery
533 of nicotine products is prohibited, except:



226212

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

536 (b) Sales from a vending machine are prohibited under
537 paragraph (a) and are only permissible from a machine that is
538 equipped with an operational lockout device that is under the
539 control of the dealer or the dealer's agent or employee who
540 directly regulates the sale of items through the machine by
541 triggering the lockout device to allow the dispensing of one
542 nicotine product. The lockout device must include a mechanism to
543 prevent the machine from functioning if the power source for the
544 lockout device fails or if the lockout device is disabled, and a
545 mechanism to ensure that only one nicotine product is dispensed
546 at a time.

547 (2) (a) A dealer that sells nicotine products may not sell,
548 permit to be sold, offer for sale, or display for sale such
549 products or devices by means of self-service merchandising.

550 (b) A dealer that sells nicotine products may not place
551 such products or devices in an open display unit unless the unit
552 is located in an area that is inaccessible to customers.

553 (3) The provisions of subsections (1) and (2) shall not
554 apply to an establishment that prohibits persons under 21 years
555 of age on the licensed premises.

556 (4) A dealer or a dealer's agent or employee may require
557 proof of age of a purchaser of a nicotine product before selling
558 the product to that person, unless the purchaser appears to be
559 30 years of age or older.

560 Section 27. Section 569.38, Florida Statutes, is created to
561 read:

562 569.38 Gift of sample nicotine products and nicotine



226212

563 dispensing devices.—The gift of sample nicotine products to any
564 person under the age of 21 by an entity permitted under this
565 part, or by an employee of such entity, is prohibited and is
566 punishable as provided in s. 569.41.

567 Section 28. Section 569.381, Florida Statutes, is created
568 to read:

569 569.381 Responsible retail nicotine products dealers;
570 qualifications; mitigation of disciplinary penalties; diligent
571 management and supervision; presumption.—

572 (1) It is the intent of the Legislature to prevent the sale
573 of nicotine products to persons under 21 years of age and to
574 encourage retail nicotine products dealers to comply with
575 responsible practices in accordance with this section.

576 (2) To qualify as a responsible retail nicotine products
577 dealer, the dealer must establish and implement procedures
578 designed to ensure that the dealer's employees comply with this
579 part. The dealer must provide a training program for the
580 dealer's employees which addresses the use and sale of nicotine
581 products and which includes at least the following topics:

582 (a) Laws covering the sale of nicotine products.

583 (b) Methods of recognizing and handling customers under 21
584 years of age.

585 (c) Procedures for proper examination of identification
586 cards in order to verify that customers are not under 21 years
587 of age.

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

590 (3) In determining penalties under s. 569.35, the division
591 may mitigate penalties imposed against a dealer because of an



226212

592 employee's illegal sale of a nicotine product to a person under
593 21 years of age if the following conditions are met:

594 (a) The dealer is qualified as a responsible dealer under
595 this section.

596 (b) The dealer provided the training program required under
597 subsection (2) to that employee before the illegal sale
598 occurred.

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

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

604 (4) The division shall develop and make available a model
605 nicotine products training program designed to ensure adherence
606 to this part by dealers and their employees which, if followed,
607 will qualify dealers as responsible dealers.

608 (5) Dealers shall exercise diligence in the management and
609 supervision of their premises and in the supervision and
610 training of their employees, agents, or servants. In proceedings
611 to impose penalties under s. 569.35, proof that employees,
612 agents, or servants of the dealer, while in the scope of their
613 employment, committed at least three violations of s. 569.41
614 during a 180-day period shall be prima facie evidence of a lack
615 of due diligence by the dealer in the management and supervision
616 of his or her premises and in the supervision and training of
617 employees, agents, officers, or servants.

618 (6) The division may consider qualification as a
619 responsible retail nicotine products dealer under this section
620 as evidence that the dealer properly exercised the diligence



226212

621 required under this section.

622 Section 29. Section 569.39, Florida Statutes, is created to
623 read:

624 569.39 Rulemaking authority.—The division shall adopt rules
625 to administer and enforce this part.

626 Section 30. Section 569.41, Florida Statutes, is created to
627 read:

628 569.41 Selling, delivering, bartering, furnishing, or
629 giving nicotine products to persons under 21 years of age;
630 criminal penalties; defense.—

631 (1) It is unlawful to sell, deliver, barter, furnish, or
632 give, directly or indirectly, to any person who is under 21
633 years of age, any nicotine product.

634 (2) Any person who violates subsection (1) commits a
635 misdemeanor of the second degree, punishable as provided in s.
636 775.082 or s. 775.083. However, any person who violates
637 subsection (1) for a second or subsequent time within 1 year
638 after the first violation commits a misdemeanor of the first
639 degree, punishable as provided in s. 775.082 or s. 775.083.

640 (3) A person charged with a violation of subsection (1) has
641 a complete defense if, at the time the nicotine product was
642 sold, delivered, bartered, furnished, or given:

643 (a) The buyer or recipient falsely evidenced that she or he
644 was 21 years of age or older;

645 (b) The appearance of the buyer or recipient was such that
646 a prudent person would believe the buyer or recipient to be 21
647 years of age or older; and

648 (c) Such person carefully checked a driver license or an
649 identification card issued by the state or another state of the



226212

650 United States, a passport, or a United States armed services
651 identification card presented by the buyer or recipient and
652 acted in good faith and in reliance upon the representation and
653 appearance of the buyer or recipient in the belief that the
654 buyer or recipient was 21 years of age or older.

655 Section 31. Section 569.42, Florida Statutes, is created to
656 read:

657 569.42 Possession, misrepresenting age or military service
658 to purchase, and purchase of nicotine products by persons under
659 21 years of age prohibited; penalties; jurisdiction; disposition
660 of fines.-

661 (1) It is unlawful for any person under 21 years of age to
662 knowingly possess any nicotine product. Any person under 21
663 years of age who violates this subsection commits a noncriminal
664 violation as provided in s. 775.08(3), punishable by:

665 (a) For a first violation, 16 hours of community service
666 or, instead of community service, a \$25 fine. In addition, the
667 person must attend a school-approved anti-tobacco and anti-
668 nicotine program, if locally available; or

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

671
672 Any second or subsequent violation not within the 12-week period
673 after the first violation is punishable as provided for a first
674 violation.

675 (2) It is unlawful for any person under 21 years of age to
676 misrepresent his or her age or military service for the purpose
677 of inducing a dealer or an agent or employee of the dealer to
678 sell, give, barter, furnish, or deliver any nicotine product, or



226212

679 to purchase, or attempt to purchase, any nicotine product from a
680 person or a vending machine. Any person under 21 years of age
681 who violates this subsection commits a noncriminal violation as
682 defined in s. 775.08(3), punishable by:

683 (a) For a first violation, 16 hours of community service
684 or, instead of community service, a \$25 fine and, in addition,
685 the person must attend a school-approved anti-tobacco and anti-
686 nicotine program, if available; or

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

689
690 Any second or subsequent violation not within the 12-week period
691 after the first violation is punishable as provided for a first
692 violation.

693 (3) Any person under 21 years of age cited for committing a
694 noncriminal violation under this section must sign and accept a
695 civil citation indicating a promise to appear before the county
696 court or comply with the requirement for paying the fine and
697 must attend a school-approved anti-tobacco and anti-nicotine
698 program, if locally available. If a fine is assessed for a
699 violation of this section, the fine must be paid within 30 days
700 after the date of the citation or, if a court appearance is
701 mandatory, within 30 days after the date of the hearing.

702 (4) A person charged with a noncriminal violation under
703 this section must appear before the county court or comply with
704 the requirement for paying the fine. The court, after a hearing,
705 shall make a determination as to whether the noncriminal
706 violation was committed. If the court finds the violation was
707 committed, it shall impose an appropriate penalty as specified



226212

708 in subsection (1) or subsection (2). A person who participates
709 in community service shall be considered an employee of the
710 state for the purpose of chapter 440, for the duration of such
711 service.

712 (5) (a) If a person under 21 years of age is found by the
713 court to have committed a noncriminal violation under this
714 section and the person has failed to complete community service,
715 pay the fine as required by paragraph (1) (a) or paragraph
716 (2) (a), or attend a school-approved anti-tobacco and anti-
717 nicotine program, if locally available, the court may direct the
718 Department of Highway Safety and Motor Vehicles to withhold
719 issuance of or suspend the driver license or driving privilege
720 of that person for a period of 30 consecutive days.

721 (b) If a person under 21 years of age is found by the court
722 to have committed a noncriminal violation under this section and
723 that person has failed to pay the applicable fine as required by
724 paragraph (1) (b) or paragraph (2) (b), the court may direct the
725 Department of Highway Safety and Motor Vehicles to withhold
726 issuance of or suspend the driver license or driving privilege
727 of that person for a period of 45 consecutive days.

728 (6) Eighty percent of all civil penalties received by a
729 county court under this section shall be remitted by the clerk
730 of the court to the Department of Revenue for transfer to the
731 Department of Education to provide for teacher training and for
732 research and evaluation to reduce and prevent the use of
733 nicotine products by children. The remaining 20 percent of civil
734 penalties received by a county court under this section shall
735 remain with the clerk of the county court to cover
736 administrative costs.



226212

737 Section 32. Section 569.43, Florida Statutes, is created to
738 read:

739 569.43 Posting of a sign stating that the sale of nicotine
740 products or nicotine dispensing devices to persons under 21
741 years of age is unlawful; enforcement; penalty.-

742 (1) A dealer that sells nicotine products shall post a
743 clear and conspicuous sign in each place of business at which
744 such products are sold which substantially states the following:

745
746 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING
747 DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST
748 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

749
750 (2) The division shall make available to dealers of
751 nicotine products signs that meet the requirements of subsection
752 (1).

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

760
761 IF YOU WERE NOT BORN BEFORE THIS DATE
762 (insert date and applicable year)
763 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
764 DISPENSING DEVICES.

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226212

766 Upon approval by the division, in lieu of a calendar a dealer
767 may use card readers, scanners, or other electronic or automated
768 systems that can verify whether a person is of legal age to
769 purchase nicotine products. Failure to comply with the
770 provisions contained in this subsection shall result in
771 imposition of administrative penalties as provided in s. 569.35.

772 (4) The division, through its agents and inspectors, shall
773 enforce this section.

774 (5) Any person who fails to comply with subsection (1)
775 commits a misdemeanor of the second degree, punishable as
776 provided in s. 775.082 or s. 775.083.

777 Section 33. Section 569.44, Florida Statutes, is created to
778 read:

779 569.44 Annual report.—The division shall report annually
780 with written findings to the Legislature and the Governor by
781 December 31, on the progress of implementing the enforcement
782 provisions of this part. This must include, but is not limited
783 to:

784 (1) The number and results of compliance visits.

785 (2) The number of violations for failure of a retailer to
786 hold a valid permit.

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

790 (4) The number of persons under age 21 cited for violations
791 of s. 569.42 and sanctions imposed as a result of citation.

792 Section 34. Section 569.45, Florida Statutes, is created to
793 read:

794 569.45 Mail order, Internet, and remote sales of nicotine



226212

795 products; age verification.-

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

797 (a) "Consumer" means a person in the state who comes into
798 possession of any nicotine product who, at the time of
799 possession, is not intending to sell or distribute the nicotine
800 product, or is not a retailer.

801 (b) "Delivery sale" means any sale of nicotine products to
802 a consumer in the state for which:

803 1. The consumer submits the order for the sale by
804 telephonic or other voice transmission, mail, delivery service,
805 or the Internet or other online service; or

806 2. The nicotine products are delivered by use of mail or a
807 delivery service.

808 (c) "Delivery service" means any person engaged in the
809 commercial delivery of letters, packages, or other containers.

810 (d) "Legal minimum purchase age" means the minimum age at
811 which an individual may legally purchase nicotine products in
812 the state.

813 (e) "Retailer" means any person who is required to obtain a
814 retail nicotine products dealer permit or a retail tobacco
815 products dealer permit, as defined in s. 569.002.

816 (f) "Shipping container" means a container in which
817 nicotine products are shipped in connection with a delivery
818 sale.

819 (g) "Shipping document" means a bill of lading, airbill,
820 United States Postal Service form, or any other document used to
821 verify the undertaking by a delivery service to deliver letters,
822 packages, or other containers.

823 (2) (a) A sale of nicotine products constituting a delivery



226212

824 sale under paragraph (1)(b) is a delivery sale regardless of
825 whether the person accepting the order for the delivery sale is
826 located inside or outside the state.

827 (b) A retailer must obtain a retail nicotine products
828 dealer permit or a retail tobacco products dealer permit, as
829 defined in s. 569.002, from the division under the requirements
830 of this chapter before accepting an order for a delivery sale.

831 (c) A person may not make a delivery sale of nicotine
832 products to any individual who is not 21 years of age or older.

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

835 1. The age verification requirements set forth in
836 subsection (3).

837 2. The disclosure requirements set forth in subsection (4).

838 3. The shipping requirements set forth in subsection (5).

839 (3) A person may not mail, ship, or otherwise deliver
840 nicotine products in connection with an order for a delivery
841 sale unless, before the first delivery to the consumer, the
842 person accepting the order for the delivery sale:

843 (a) Obtains from the person submitting the order a
844 certification that includes:

845 1. Reliable confirmation that the person is 21 years of age
846 or older; and

847 2. A statement signed by the person in writing and under
848 penalty of perjury which:

849 a. Certifies the address and date of birth of the person;
850 and

851 b. Confirms that the person wants to receive delivery sales
852 from a nicotine products company and understands that, under the



226212

853 laws of the state, the following actions are illegal:
854 (I) Signing another person's name to the certification;
855 (II) Selling nicotine products to individuals who are not
856 21 years of age or older; and
857 (III) Purchasing nicotine products, if the person making
858 the purchase is not 21 years of age or older.
859 (b) Makes a good faith effort to verify the information
860 contained in the certification provided by the individual under
861 paragraph (a) against a commercially available database that may
862 be reasonably relied upon for accurate age information or
863 obtains a photocopy or other image of a valid government-issued
864 identification card stating the date of birth or age of the
865 individual.
866 (c) Provides to the individual, via electronic mail or
867 other means, a notice meeting the requirements of subsection
868 (4).
869 (d) If an order for nicotine products is made pursuant to
870 an advertisement on the Internet, receives payment for the
871 delivery sale from the consumer by a credit or debit card issued
872 in the name of the consumer, or by personal or company check of
873 the consumer.
874 (e) Submits, to each credit card acquiring company with
875 which the

876
877 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

878 And the directory clause is amended as follows:

879 Delete line 278

880 and insert:

881 Section 35. Paragraph (c) of subsection (1) and paragraph



226212

882 (a) of subsection (2) of section