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LEGISLATIVE ACTION

Senate

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House

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,



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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.—



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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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



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a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given:

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

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

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

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

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

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

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

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



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after the first violation, a \$25 fine.

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

(a) The date and time of issuance.

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

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

(d) The facts constituting reasonable cause.

(e) The number of the Florida statute violated.

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

569.19 Annual report.—The division shall report annually



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

(1) The number and results of compliance visits.

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

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

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

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

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

(1) "Dealer" is synonymous with the term "retail nicotine products dealer."

(2) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

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



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

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

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

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

(c) Product that contains incidental nicotine.

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

569.37 Sale or delivery of nicotine products; restrictions.—

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



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

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

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

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

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

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

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

569.38 Gift of sample nicotine products and nicotine



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

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

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

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

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

(a) Laws covering the sale of nicotine products.

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

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

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

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



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

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

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

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

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

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

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

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



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required under this section.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

IF YOU WERE NOT BORN BEFORE THIS DATE

(insert date and applicable year)

YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.



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

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

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

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

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

(1) The number and results of compliance visits.

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

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

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

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

569.45 Mail order, Internet, and remote sales of nicotine



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products; age verification.—

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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laws of the state, the following actions are illegal:

(I) Signing another person's name to the certification;

(II) Selling nicotine products to individuals who are not
21 years of age or older; and

(III) Purchasing nicotine products, if the person making
the purchase is not 21 years of age or older.

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

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

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

(e) Submits, to each credit card acquiring company with
which the

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

And the directory clause is amended as follows:

Delete line 278

and insert:

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



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882 (a) of subsection (2) of section