



363164

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/24/2021	.	
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The Committee on Health Policy (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 265 - 653

and insert:

Section 7. Section 569.0025, Florida Statutes, is created to read:

569.0025 Preemption.—The establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, tobacco products is preempted to the state. However, this section does not preempt the ability



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11 of a political subdivision to require retail licensure for the  
12 sale of tobacco products.

13 Section 8. Paragraph (c) of subsection (1) of section  
14 569.003, Florida Statutes, is amended to read:

15 569.003 Retail tobacco products dealer permits;  
16 application; qualifications; fees; renewal; duplicates.—

17 (1)

18 (c) Permits shall be issued annually, upon payment of the  
19 annual permit fee prescribed by the division. The division shall  
20 fix the fee in an amount sufficient to meet the costs incurred  
21 by it in carrying out its permitting, enforcement, and  
22 administrative responsibilities under this part ~~chapter~~, but the  
23 fee may not exceed \$50. The proceeds of the fee shall be  
24 deposited into the Alcoholic Beverage and Tobacco Trust Fund.

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

27 569.004 Consent to inspection and search without warrant.—  
28 An applicant for a permit, by accepting the permit when issued,  
29 agrees that the place or premises covered by the permit is  
30 subject to inspection and search without a search warrant by the  
31 division or its authorized assistants, and by sheriffs, deputy  
32 sheriffs, or police officers, to determine compliance with this  
33 chapter, including part II of this chapter if the applicant  
34 deals, at retail, in nicotine products within the state or  
35 allows a nicotine products vending machine to be located on its  
36 premises within the state.

37 Section 10. Section 569.006, Florida Statutes, is amended  
38 to read:

39 569.006 Retail tobacco products dealers; administrative



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40 penalties.—The division may suspend or revoke the permit of the  
41 dealer upon sufficient cause appearing of the violation of any  
42 of the provisions of this chapter, including part II of this  
43 chapter if the dealer deals, at retail, in nicotine products  
44 within the state or allows a nicotine products vending machine  
45 to be located on its premises within the state, by a dealer or  
46 by a dealer's agent or employee. The division may also assess  
47 and accept administrative fines of up to \$1,000 against a dealer  
48 for each violation. The division shall deposit all fines  
49 collected into the General Revenue Fund as collected. An order  
50 imposing an administrative fine becomes effective 15 days after  
51 the date of the order. The division may suspend the imposition  
52 of a penalty against a dealer, conditioned upon the dealer's  
53 compliance with terms the division considers appropriate.

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

56 569.007 Sale or delivery of tobacco products;  
57 restrictions.—

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

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

63 (b) Sales from a vending machine are prohibited under the  
64 provisions of paragraph (1) (a) and are only permissible from a  
65 machine that is equipped with an operational lockout device  
66 which is under the control of the dealer or the dealer's agent  
67 or employee who directly regulates the sale of items through the  
68 machine by triggering the lockout device to allow the dispensing



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69 of one tobacco product. The lockout device must include a  
70 mechanism to prevent the machine from functioning if the power  
71 source for the lockout device fails or if the lockout device is  
72 disabled, and a mechanism to ensure that only one tobacco  
73 product is dispensed at a time.

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

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

79 569.0075 Gift of sample tobacco products prohibited.—The  
80 gift of sample tobacco products to any person under the age of  
81 21 ~~18~~ by an entity licensed or permitted under the provisions of  
82 chapter 210 or this part ~~chapter~~, or by an employee of such  
83 entity, is prohibited and is punishable as provided in s.  
84 569.101.

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

88 569.008 Responsible retail tobacco products dealers;  
89 qualifications; mitigation of disciplinary penalties; diligent  
90 management and supervision; presumption.—

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

95 (2) To qualify as a responsible retail tobacco products  
96 dealer, the dealer must establish and implement procedures  
97 designed to ensure that the dealer's employees comply with the



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98 provisions of this part ~~chapter~~. The dealer must provide a  
99 training program for the dealer's employees which addresses the  
100 use and sale of tobacco products and which includes at least the  
101 following topics:

102 (b) Methods of recognizing and handling customers under 21  
103 ~~18~~ years of age.

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

107 (3) In determining penalties under s. 569.006, the division  
108 may mitigate penalties imposed against a dealer because of an  
109 employee's illegal sale of a tobacco product to a person under  
110 21 ~~18~~ years of age if the following conditions are met:

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

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

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

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

121 Section 14. Section 569.009, Florida Statutes, is amended  
122 to read:

123 569.009 Rulemaking authority.—The division shall adopt any  
124 rules necessary to administer and enforce the provisions of this  
125 part ~~chapter~~.

126 Section 15. Section 569.101, Florida Statutes, is amended



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127 to read:

128           569.101 Selling, delivering, bartering, furnishing, or  
129 giving tobacco products to persons under 21 ~~18~~ years of age;  
130 criminal penalties; defense.-

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

134           (2) Any person who violates subsection (1) commits a  
135 misdemeanor of the second degree, punishable as provided in s.  
136 775.082 or s. 775.083. However, any person who violates  
137 subsection (1) for a second or subsequent time within 1 year of  
138 the first violation, commits a misdemeanor of the first degree,  
139 punishable as provided in s. 775.082 or s. 775.083.

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

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

145           (b) The appearance of the buyer or recipient was such that  
146 a prudent person would believe the buyer or recipient to be 21  
147 ~~18~~ years of age or older; and

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

155           Section 16. Section 569.11, Florida Statutes, is amended to



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156 read:

157           569.11 Possession, misrepresenting age or military service  
158 to purchase, and purchase of tobacco products by persons under  
159 21 ~~18~~ years of age prohibited; penalties; jurisdiction;  
160 disposition of fines.—

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

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

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

171  
172 Any second or subsequent violation not within the 12-week period  
173 after the first violation is punishable as provided for a first  
174 violation.

175           (2) It is unlawful for any person under 21 ~~18~~ years of age  
176 to misrepresent his or her age or military service for the  
177 purpose of inducing a dealer or an agent or employee of the  
178 dealer to sell, give, barter, furnish, or deliver any tobacco  
179 product, or to purchase, or attempt to purchase, any tobacco  
180 product from a person or a vending machine. Any person under 21  
181 ~~18~~ years of age who violates this subsection commits a  
182 noncriminal violation as provided in s. 775.08(3), punishable  
183 by:

184           (a) For a first violation, 16 hours of community service



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185 or, instead of community service, a \$25 fine and, in addition,  
186 the person must attend a school-approved anti-tobacco program,  
187 if available; or

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

190

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

194 (3) Any person under 21 ~~18~~ years of age cited for  
195 committing a noncriminal violation under this section must sign  
196 and accept a civil citation indicating a promise to appear  
197 before the county court or comply with the requirement for  
198 paying the fine and must attend a school-approved anti-tobacco  
199 program, if locally available. If a fine is assessed for a  
200 violation of this section, the fine must be paid within 30 days  
201 after the date of the citation or, if a court appearance is  
202 mandatory, within 30 days after the date of the hearing.

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

213 (5) (a) If a person under 21 ~~18~~ years of age is found by the





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214 court to have committed a noncriminal violation under this  
215 section and that person has failed to complete community  
216 service, pay the fine as required by paragraph (1) (a) or  
217 paragraph (2) (a), or attend a school-approved anti-tobacco  
218 program, if locally available, the court may direct the  
219 Department of Highway Safety and Motor Vehicles to withhold  
220 issuance of or suspend the driver license or driving privilege  
221 of that person for a period of 30 consecutive days.

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

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

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

240 569.12 Jurisdiction; tobacco product and nicotine product  
241 enforcement officers or agents; enforcement.—

242 (1) In addition to the Division of Alcoholic Beverages and



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243 Tobacco of the Department of Business and Professional  
244 Regulation, any law enforcement officer certified under s.  
245 943.10(1), (6), or (8) shall enforce the provisions of this  
246 chapter.

247 (2) (a) A county or municipality may designate certain of  
248 its employees or agents as tobacco product and nicotine product  
249 enforcement officers. The training and qualifications of the  
250 employees or agents for such designation shall be determined by  
251 the county or the municipality. Nothing in this section shall be  
252 construed to permit the carrying of firearms or other weapons by  
253 a tobacco product and nicotine product enforcement agent, nor  
254 does designation as a tobacco product and nicotine product  
255 enforcement officer provide the employee or agent with the power  
256 of arrest or subject the employee or agent to the provisions of  
257 ss. 943.085-943.255. Nothing in this section amends, alters, or  
258 contravenes the provisions of any state-administered retirement  
259 system or any state-supported retirement system established by  
260 general law.

261 (b) A tobacco and nicotine product enforcement officer is  
262 authorized to issue a citation to a person under the age of 21  
263 ~~18~~ when, based upon personal investigation, the officer has  
264 reasonable cause to believe that the person has committed a  
265 civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s.  
266 569.42.

267 (3) A correctional probation officer as defined in s.  
268 943.10(3) is authorized to issue a citation to a person under  
269 the age of 21 ~~18~~ when, based upon personal investigation, the  
270 officer has reasonable cause to believe that the person has  
271 committed a civil infraction in violation of s. 569.11 or s.



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272 569.42.

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

278 (a) The date and time of issuance.

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

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

282 (d) The facts constituting reasonable cause.

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

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

285 (g) The procedure for the person to follow in order to  
286 contest the citation, perform the required community service,  
287 attend the required anti-tobacco or anti-tobacco and anti-  
288 nicotine program, or to pay the civil penalty.

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

291 569.14 Posting of a sign stating that the sale of tobacco  
292 products or nicotine products to persons under 21 ~~18~~ years of  
293 age is unlawful; enforcement; penalty.-

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

297  
298 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE  
299 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS  
300 REQUIRED FOR PURCHASE.



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301  
302 (2) A dealer that sells tobacco products and nicotine  
303 products or nicotine dispensing devices, ~~as defined in s.~~  
304 ~~877.112,~~ may use a sign that substantially states the following:

305  
306 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR  
307 NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE  
308 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS  
309 REQUIRED FOR PURCHASE.

310  
311 A dealer that uses a sign as described in this subsection meets  
312 the signage requirements of subsection (1) and s. 569.43(1) ~~s.~~  
313 ~~877.112.~~

314 (3) The division shall make available to dealers of tobacco  
315 products signs that meet the requirements of subsection (1) or  
316 subsection (2).

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

324  
325 IF YOU WERE NOT BORN BEFORE THIS DATE  
326 (insert date and applicable year)  
327 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS,  
328 OR NICOTINE DISPENSING DEVICES.

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

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

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

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

343 569.19 Annual report.—The division shall report annually  
344 with written findings to the Legislature and the Governor by  
345 December 31, on the progress of implementing the enforcement  
346 provisions of this part ~~chapter~~. This must include, but is not  
347 limited to:

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

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

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

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

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



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359       569.31 Definitions.—As used in this part, the term:  
360       (1) "Dealer" is synonymous with the term "retail nicotine  
361 products dealer."  
362       (2) "Division" means the Division of Alcoholic Beverages  
363 and Tobacco of the Department of Business and Professional  
364 Regulation.  
365       (3) "Nicotine dispensing device" means any product that  
366 employs an electronic, chemical, or mechanical means to produce  
367 vapor or aerosol from a nicotine product, including, but not  
368 limited to, an electronic cigarette, electronic cigar,  
369 electronic cigarillo, electronic pipe, or other similar device  
370 or product, any replacement cartridge for such device, and any  
371 other container of nicotine in a solution or other form intended  
372 to be used with or within an electronic cigarette, electronic  
373 cigar, electronic cigarillo, electronic pipe, or other similar  
374 device or product.  
375       (4) "Nicotine product" means any product that contains  
376 nicotine, including liquid nicotine, which is intended for human  
377 consumption, whether inhaled, chewed, absorbed, dissolved, or  
378 ingested by any means. The term also includes any nicotine  
379 dispensing device. The term does not include a:  
380       (a) Tobacco product, as defined in s. 569.002;  
381       (b) Product regulated as a drug or device by the United  
382 States Food and Drug Administration under Chapter V of the  
383 Federal Food, Drug, and Cosmetic Act; or  
384       (c) Product that contains incidental nicotine.  
385       (5) "Permit" is synonymous with the term "retail nicotine  
386 products dealer permit."  
387       (6) "Retail nicotine products dealer" means the holder of a



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388 retail nicotine products dealer permit.

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

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

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

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

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

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

404 569.315 Preemption.—The establishment of the minimum age  
405 for purchasing or possessing, and the regulation for the  
406 marketing, sale, or delivery of, nicotine products is preempted  
407 to the state. However, this section does not preempt the ability  
408 of a political subdivision to require retail licensure for the  
409 sale of nicotine products.

410  
411 ===== T I T L E A M E N D M E N T =====

412 And the title is amended as follows:

413 Delete lines 18 - 42

414 and insert:

415 creating s. 569.0025, F.S.; preempting the  
416 establishment of the minimum age for purchasing and



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417 possessing, and the regulation for the marketing,  
418 sale, or delivery of, tobacco products to the state;  
419 providing an exception; amending ss. 569.003, 569.004,  
420 and 569.006, F.S.; conforming provisions to changes  
421 made by the act; amending s. 569.007, F.S.; revising  
422 age limitations relating to the sale and delivery of  
423 tobacco products; revising applicability; amending s.  
424 569.0075, F.S.; revising age limitations relating to  
425 gifting sample tobacco products; amending s. 569.008,  
426 F.S.; revising legislative intent; revising  
427 qualification requirements for responsible retail  
428 tobacco products dealers; conforming provisions to  
429 changes made by the act; amending s. 569.009, F.S.;  
430 conforming a provision to changes made by the act;  
431 amending s. 569.101, F.S.; revising age limitations  
432 relating to selling, delivering, bartering,  
433 furnishing, or giving tobacco products to certain  
434 persons; amending s. 569.11, F.S.; revising age  
435 limitations relating to possessing and obtaining  
436 tobacco products; amending s. 569.12, F.S.; expanding  
437 the authority of tobacco product enforcement officers  
438 to include nicotine products; amending s. 569.14,  
439 F.S.; revising requirements for signage relating to  
440 tobacco products, nicotine products, and nicotine  
441 dispensing devices; conforming provisions to changes  
442 made by the act; amending s. 569.19, F.S.; conforming  
443 provisions to changes made by the act; creating s.  
444 569.31, F.S.; defining terms; creating s. 569.315,  
445 F.S.; preempting the establishment of the minimum age





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446 | for purchasing and possessing, and the regulation for  
447 | the marketing, sale, or delivery of, nicotine products  
448 | to the state; providing an exception; creating s.