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LEGISLATIVE ACTION

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

1 **Senate Substitute for Amendment (363164) (with title**
2 **amendment)**

3
4 Delete lines 265 - 653
5 and insert:

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

8 569.0025 Preemption.—The establishment of the minimum age
9 for purchasing or possessing, and the regulation for the
10 marketing, sale, or delivery of, tobacco products is preempted



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11 to the state.

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

14 569.003 Retail tobacco products dealer permits;
15 application; qualifications; fees; renewal; duplicates.-

16 (1)

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

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

26 569.004 Consent to inspection and search without warrant.-
27 An applicant for a permit, by accepting the permit when issued,
28 agrees that the place or premises covered by the permit is
29 subject to inspection and search without a search warrant by the
30 division or its authorized assistants, and by sheriffs, deputy
31 sheriffs, or police officers, to determine compliance with this
32 chapter, including part II of this chapter if the applicant
33 deals, at retail, in nicotine products within the state or
34 allows a nicotine products vending machine to be located on its
35 premises within the state.

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

38 569.006 Retail tobacco products dealers; administrative
39 penalties.-The division may suspend or revoke the permit of the



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

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

55 569.007 Sale or delivery of tobacco products;
56 restrictions.-

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

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

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



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

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

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

78 569.0075 Gift of sample tobacco products prohibited.—The
79 gift of sample tobacco products to any person under the age of
80 21 ~~18~~ by an entity licensed or permitted under the provisions of
81 chapter 210 or this part ~~chapter~~, or by an employee of such
82 entity, is prohibited and is punishable as provided in s.
83 569.101.

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

87 569.008 Responsible retail tobacco products dealers;
88 qualifications; mitigation of disciplinary penalties; diligent
89 management and supervision; presumption.—

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

94 (2) To qualify as a responsible retail tobacco products
95 dealer, the dealer must establish and implement procedures
96 designed to ensure that the dealer's employees comply with the
97 provisions of this part ~~chapter~~. The dealer must provide a



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98 training program for the dealer's employees which addresses the
99 use and sale of tobacco products and which includes at least the
100 following topics:

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

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

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

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

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

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

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

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

122 569.009 Rulemaking authority.—The division shall adopt any
123 rules necessary to administer and enforce the provisions of this
124 part ~~chapter~~.

125 Section 15. Section 569.101, Florida Statutes, is amended
126 to read:



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127 569.101 Selling, delivering, bartering, furnishing, or
128 giving tobacco products to persons under 21 ~~18~~ years of age;
129 criminal penalties; defense.—

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

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

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

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

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

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

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



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156 569.11 Possession, misrepresenting age or military service
157 to purchase, and purchase of tobacco products by persons under
158 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
159 disposition of fines.—

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

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

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

170
171 Any second or subsequent violation not within the 12-week period
172 after the first violation is punishable as provided for a first
173 violation.

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

183 (a) For a first violation, 16 hours of community service
184 or, instead of community service, a \$25 fine and, in addition,



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185 the person must attend a school-approved anti-tobacco program,
186 if available; or

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

189

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

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

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

212 (5) (a) If a person under 21 ~~18~~ years of age is found by the
213 court to have committed a noncriminal violation under this



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

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

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

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

239 569.12 Jurisdiction; tobacco product and nicotine product
240 enforcement officers or agents; enforcement.—

241 (1) In addition to the Division of Alcoholic Beverages and
242 Tobacco of the Department of Business and Professional



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

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

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

266 (3) A correctional probation officer as defined in s.
267 943.10(3) is authorized to issue a citation to a person under
268 the age of 21 ~~18~~ when, based upon personal investigation, the
269 officer has reasonable cause to believe that the person has
270 committed a civil infraction in violation of s. 569.11 or s.
271 569.42.



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

277 (a) The date and time of issuance.

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

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

281 (d) The facts constituting reasonable cause.

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

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

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

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

290 569.14 Posting of a sign stating that the sale of tobacco
291 products or nicotine products to persons under 21 ~~18~~ years of
292 age is unlawful; enforcement; penalty.—

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

296
297 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE
298 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
299 REQUIRED FOR PURCHASE.

300



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

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

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

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

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

324 IF YOU WERE NOT BORN BEFORE THIS DATE

325 (insert date and applicable year)

326 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS,
327 OR NICOTINE DISPENSING DEVICES.
328

329 Upon approval by the division, in lieu of a calendar a dealer



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

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

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

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

342 569.19 Annual report.—The division shall report annually
343 with written findings to the Legislature and the Governor by
344 December 31, on the progress of implementing the enforcement
345 provisions of this part ~~chapter~~. This must include, but is not
346 limited to:

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

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

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

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

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

358 569.31 Definitions.—As used in this part, the term:



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

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

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

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

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

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

383 (c) Product that contains incidental nicotine.

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

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



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

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

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

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

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

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

403 569.315 Preemption.—The establishment of the minimum age
404 for purchasing or possessing, and the regulation for the
405 marketing, sale, or delivery of, nicotine products is preempted
406 to the state.

407
408 ===== T I T L E A M E N D M E N T =====

409 And the title is amended as follows:

410 Delete lines 18 - 42

411 and insert:

412 creating s. 569.0025, F.S.; preempting the
413 establishment of the minimum age for purchasing and
414 possessing, and the regulation for the marketing,
415 sale, or delivery of, tobacco products to the state;
416 amending ss. 569.003, 569.004, and 569.006, F.S.;



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