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LEGISLATIVE ACTION

Senate

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House

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Floor: 2/AD/2R

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04/22/2021 11:12 AM

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Senator Hutson moved the following:

1           **Senate Substitute for Amendment (226212) (with directory**  
2 **and title amendments)**

3  
4           Delete lines 290 - 1152

5 and insert:

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

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

11           569.004 Consent to inspection and search without warrant.-



465114

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

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

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

38 Section 11. Subsections (1), (2), and (4) of section  
39 569.007, Florida Statutes, are amended to read:

40 569.007 Sale or delivery of tobacco products;



465114

41 restrictions.-

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

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

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

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

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

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

67 569.0075 Gift of sample tobacco products prohibited.—The  
68 gift of sample tobacco products to any person under the age of  
69 21 ~~18~~ by an entity licensed or permitted under the provisions of



465114

70 chapter 210 or this part ~~chapter~~, or by an employee of such  
71 entity, is prohibited and is punishable as provided in s.  
72 569.101.

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

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

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

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

90 (b) Methods of recognizing and handling customers under 21  
91 ~~18~~ years of age.

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

95 (3) In determining penalties under s. 569.006, the division  
96 may mitigate penalties imposed against a dealer because of an  
97 employee's illegal sale of a tobacco product to a person under  
98 21 ~~18~~ years of age if the following conditions are met:



465114

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

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

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

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

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

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

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

116           569.101 Selling, delivering, bartering, furnishing, or  
117 giving tobacco products to persons under 21 ~~18~~ years of age;  
118 criminal penalties; defense.—

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

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



465114

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

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

133 (b) The appearance of the buyer or recipient was such that  
134 a prudent person would believe the buyer or recipient to be 21  
135 ~~18~~ years of age or older; and

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

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

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

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

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



465114

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

159

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

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

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

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

178

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

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



465114

186 paying the fine and must attend a school-approved anti-tobacco  
187 program, if locally available. If a fine is assessed for a  
188 violation of this section, the fine must be paid within 30 days  
189 after the date of the citation or, if a court appearance is  
190 mandatory, within 30 days after the date of the hearing.

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

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

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





465114

215 withhold issuance of or suspend the driver license or driving  
216 privilege of that person for a period of 45 consecutive days.

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

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

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

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

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



465114

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

249 (b) A tobacco product and nicotine product enforcement  
250 officer is authorized to issue a citation to a person under the  
251 age of 21 ~~18~~ when, based upon personal investigation, the  
252 officer has reasonable cause to believe that the person has  
253 committed a civil infraction in violation of s. 386.212, ~~or~~ s.  
254 569.11, or s. 569.42.

255 (3) A correctional probation officer as defined in s.  
256 943.10(3) is authorized to issue a citation to a person under  
257 the age of 21 ~~18~~ when, based upon personal investigation, the  
258 officer has reasonable cause to believe that the person has  
259 committed a civil infraction in violation of s. 569.11 or s.  
260 569.42.

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

266 (a) The date and time of issuance.

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

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

270 (d) The facts constituting reasonable cause.

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

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



465114

273 (g) The procedure for the person to follow in order to  
274 contest the citation, perform the required community service,  
275 attend the required anti-tobacco or anti-tobacco and anti-  
276 nicotine program, or to pay the civil penalty.

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

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

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

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

289  
290 (2) A dealer that sells tobacco products and nicotine  
291 products or nicotine dispensing devices, ~~as defined in s.~~  
292 ~~877.112,~~ may use a sign that substantially states the following:

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

298  
299 A dealer that uses a sign as described in this subsection meets  
300 the signage requirements of subsection (1) and s. 569.43(1) ~~s.~~  
301 ~~877.112.~~



465114

302 (3) The division shall make available to dealers of tobacco  
303 products signs that meet the requirements of subsection (1) or  
304 subsection (2).

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

312  
313 IF YOU WERE NOT BORN BEFORE THIS DATE

314 (insert date and applicable year)

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

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

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

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

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



465114

331           569.19 Annual report.—The division shall report annually  
332 with written findings to the Legislature and the Governor by  
333 December 31, on the progress of implementing the enforcement  
334 provisions of this part ~~chapter~~. This must include, but is not  
335 limited to:

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

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

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

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

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

347           569.31 Definitions.—As used in this part, the term:

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

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

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



465114

360 to be used with or within an electronic cigarette, electronic  
361 cigar, electronic cigarillo, electronic pipe, or other similar  
362 device or product.

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

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

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

372 (c) Product that contains incidental nicotine.

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

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

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

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

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

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



465114

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

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

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

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

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

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

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



465114

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

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

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





465114

447 chapter shall be revoked by the division.

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

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

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

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

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

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

475 (2) A retail tobacco products dealer, as defined in s.



465114

476 569.002(4), is not required to have a separate or additional  
477 retail nicotine products dealer permit to deal, at retail, in  
478 nicotine products within the state, or allow a nicotine products  
479 vending machine to be located on its premises in the state. Any  
480 retail tobacco products dealer that deals, at retail, in  
481 nicotine products or allows a nicotine products vending machine  
482 to be located on its premises in the state, is subject to, and  
483 must be in compliance with, this part.

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

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

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

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

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

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

504 (d) The court, after a hearing, shall make a determination



465114

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

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

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

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

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

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

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



465114

534 of nicotine products is prohibited, except:

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

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

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

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

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

557 (4) A dealer or a dealer's agent or employee must require  
558 proof of age of a purchaser of a nicotine product before selling  
559 the product to that person, unless the purchaser appears to be  
560 30 years of age or older.

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



465114

563           569.38 Gift of sample nicotine products and nicotine  
564 dispensing devices.—The gift of sample nicotine products to any  
565 person under the age of 21 by an entity permitted under this  
566 part, or by an employee of such entity, is prohibited and is  
567 punishable as provided in s. 569.41.

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

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

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

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

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

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

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

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

591           (3) In determining penalties under s. 569.35, the division



465114

592 may mitigate penalties imposed against a dealer because of an  
593 employee's illegal sale of a nicotine product to a person under  
594 21 years of age if the following conditions are met:

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

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

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

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

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

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

619 (6) The division may consider qualification as a  
620 responsible retail nicotine products dealer under this section



465114

621 as evidence that the dealer properly exercised the diligence  
622 required under this section.

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

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

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

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

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

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

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

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

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

649 (c) Such person carefully checked a driver license or an



465114

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

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

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

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

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

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

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

676 (2) It is unlawful for any person under 21 years of age to  
677 misrepresent his or her age or military service for the purpose  
678 of inducing a dealer or an agent or employee of the dealer to





465114

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

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

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

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

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

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



465114

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

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

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

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



465114

737 administrative costs.

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

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

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

746

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

750

751 (2) The division shall make available to dealers of  
752 nicotine products signs that meet the requirements of subsection  
753 (1).

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

761

762 IF YOU WERE NOT BORN BEFORE THIS DATE

763 (insert date and applicable year)

764 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
765 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:



465114

795 569.45 Mail order, Internet, and remote sales of nicotine  
796 products; age verification.—

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

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

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

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

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

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

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

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

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

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



465114

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

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

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

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

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

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

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

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

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

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

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

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

851 and

852 b. Confirms that the person wants to receive delivery sales



465114

853 from a nicotine products company and understands that, under the  
854 laws of the state, the following actions are illegal:

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

856 (II) Selling nicotine products to individuals who are not  
857 21 years of age or older; and

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

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

867 (c) Provides to the individual, via electronic mail or  
868 other means, a notice meeting the requirements of subsection  
869 (4).

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

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

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

879 And the directory clause is amended as follows:

880 Delete line 278

881 and insert:



465114

882           Section 35. Paragraph (c) of subsection (1) and paragraph  
883 (a) of subsection (2) of section

884

885 ===== T I T L E   A M E N D M E N T =====

886 And the title is amended as follows:

887           Between lines 25 and 26

888 insert:

889           requiring proof of age for certain purchases of

890           tobacco products;