

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1080

INTRODUCER: Health Policy Committee; Regulated Industries Committee; and Senator Hutson

SUBJECT: Tobacco and Nicotine Products

DATE: April 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1080 relates to the regulation of the retail sale of tobacco products and nicotine products. The bill:

- Increases the minimum age to lawfully purchase and possess tobacco products and nicotine products from 18 years of age to 21 years of age.
- Creates a new part of ch. 569, F.S., to regulate the sale of, and create a separate licensing structure for, the sale of “nicotine dispensing devices” and nicotine products.
- Regulates tobacco products under part I of ch. 569, F.S., which consists of the current-law provisions.
- Regulates nicotine products under part II of ch. 569, F.S., which includes the requirements in current law for the sale of nicotine products, and additional provisions for the regulation of nicotine product sales the same as currently apply to the regulation of tobacco product sales.
- Excludes tobacco products from the definition of nicotine products.
- Requires retail dealers of nicotine products to have a permit issued by the Division of Alcoholic Beverages and Tobacco, but does not require a fee for the permit. However, the holder of a retail tobacco products dealer permit may sell nicotine products without an additional permit.
- Preempts to the state the establishment of a minimum age for purchasing or possessing tobacco or nicotine products as well as regulation of the marketing, sale, or delivery of tobacco or nicotine products.
- Prohibits smoking and vaping by any person under 21 years of age on or near school property. (Current law applies the prohibition to persons under 18 years of age).

- Keeps the exemption in current law for underage persons in the military and persons acting in the scope of lawful employment.
- Requires age verification before a sale or delivery of tobacco products to person who appear to be under 30 years of age. (This complies with federal law.)

The effective date of the bill is October 1, 2021.

II. Present Situation:

Regulation of Tobacco Products

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under ch. 569, F.S.

Tobacco Products Definitions

Section 569.002(6), F.S., defines the term “tobacco products” to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(12), F.S., provides a separate definition for the term “tobacco products” in the context of the taxation of these products and the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context the term “tobacco products” means:

loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of “tobacco products” in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.¹ Section 569.003, F.S., relates to retail tobacco products dealer permits, the permit application, qualifications, fees, renewals, and duplicates. Section 569.003(2), F.S., stipulates that permits may only be issued to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. The division is authorized to refuse to issue a permit to any person, firm, association, or corporation whose permit has been revoked; to any corporation with

¹ Section 569.003, F.S.

an officer who has had his or her permit revoked; or to any person who is or has been an officer of a corporation whose permit has been revoked.

The fee for an annual permit is established in rule by the division at an amount to cover the regulatory costs of the program, not to exceed \$50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.²

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, including age verification requirements, all of which is generally referred to as “delivery sales.” It also defines 10 relevant terms.

Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.³

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.⁴ Before making sales or shipping orders, entities must provide specific notice to the division as to shipper and receiver, with monthly reporting.⁵ There are requirements specific to purchase orders.⁶

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.

² Section 569.003(1)(c), F.S.

³ Section 210.095(5), F.S.

⁴ *Id.*

⁵ Section 210.095(6), F.S.

⁶ Section 210.095(7), F.S.

- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and second degree misdemeanor penalties⁷ in s. 569.101, F.S., (prohibiting the sale, delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco product) apply to s. 210.095, F.S., relating to the delivery of tobacco products to persons under the age of 18.

Section 210.15, F.S., relates to permits for the sale of specific tobacco products. A requirement for issuance of such a permit is for a person to be of good moral character and not less than 18 years of age. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 18 years of age.⁸

Signage Requirement

Retail tobacco products dealers must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailer dealers and must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.⁹

Annual Report

The DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and
- The number of people under the age of 18 cited for violations, including sanctions imposed as a result of such citation, related to misrepresenting their age, purchasing tobacco products underage, or misrepresenting military service for the purpose of obtaining tobacco products underage.¹⁰

Tobacco Products and Minors

Current law prohibits the sales of tobacco products to, and the possession of tobacco products by, person under the age of 18. Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing, or giving of tobacco products to persons under the age of 18. A violation of this

⁷ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁸ Section 210.15(2)(b), F.S.

⁹ Section 569.14, F.S.

¹⁰ Section 569.19, F.S.

prohibition is a second degree misdemeanor.¹¹ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.¹²

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification¹³ upon which the person relied in good faith.¹⁴

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products:

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second or subsequent violation within 12 weeks of the first violation is punishable with a \$25 fine.

Any second or subsequent violation within the 12-week time period after the first violation is punishable as a first violation.¹⁵

Eighty percent of all civil penalties received by a county court under s. 569.11, F.S., must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training, and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.¹⁶

Section 569.002(7), F.S., provides that the term “any person under the age of 18” does not include any person under age 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

¹¹ *Supra* note 6.

¹² Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹³ Identification includes carefully checking “a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.” *See* s. 569.101(3)(c), F.S.

¹⁴ Section 569.101(3)(c), F.S.

¹⁵ Section 569.11(1), F.S.

¹⁶ Section 569.11(6), F.S.

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.¹⁷

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on the premises and do not apply to the sale or delivery of cigars and pipe tobacco.¹⁸

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.12, F.S., provides enforcement authority to full-time, part-time, and auxiliary law enforcement officers for the provisions of ch. 569, F.S. The section also authorizes a county or municipality to designate certain of its employees or agents as tobacco product enforcement officers within specified guidelines. Such enforcement officers are authorized to issue a citation to a person under 18 years of age based on a reasonable cause to believe that a civil infraction has been committed. Similar authority is provided for correctional probation officers. Details are provided as to the required elements of the citation.

Retail tobacco products dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.¹⁹

Section 569.19, F.S., requires the division to annually provide to the Legislature and the Governor, by December 31, a progress report on its enforcement actions specific to the number and results of compliance visits, number of violations for failure of a retailer to hold a valid license, number of violations of selling tobacco products to persons under age 18, results of administrative hearings on these issues, and number of persons under age 18 cited for violations of underage purchases and sanctions imposed as a result of a citation.

Section 386.212, F.S., in the Florida Clean Indoor Air Act,²⁰ prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6:00 a.m. and midnight.²¹ A violation of this prohibition

¹⁷ Section 569.007(1), F.S.

¹⁸ Section 569.007(2) and (3), F.S.

¹⁹ Section 569.14, F.S.

²⁰ Part II of ch. 386, F.S.

²¹ Section 386.212(1), F.S.

is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.²²

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the division’s penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 18 years of age, the guidelines provide:

- 1st occurrence -- \$500 fine.
- 2nd occurrence -- \$1,000 fine.
- 3rd occurrence -- \$2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence -- revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.²³

Section 569.008, F.S., provides a process for a retail tobacco products dealer to mitigate penalties imposed against a dealer because of an employee’s illegal sale of a tobacco product to a person under 18 years of age.²⁴ The process encourages retail tobacco products dealers to comply with responsible practices. The division may mitigate penalties if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer’s employees comply with ch. 569, F.S., such as employee training;
- The dealer had no knowledge of that employee’s violation at the time of the violation and did not direct, approve, or participate in the violation; or
- The sale was made through a vending machine equipped with an operational lock-out device.²⁵

Nicotine Dispensing Devices

Section 877.112, F.S., provides requirements for the sale of nicotine dispensing devices and nicotine products to minors, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A license is not required to sell or offer for sale “nicotine dispensing devices” or “nicotine products.”

²² Section 386.212(3), F.S.

²³ Fla. Admin. Code R. 61A-2.022(1) (2019).

²⁴ The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.

²⁵ Section 569.008(3), F.S.

A “nicotine dispensing device” is:

any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.²⁶

A “nicotine product” is:

any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.²⁷

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.²⁸ It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.²⁹

Persons under 18 years of age possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation. The penalty is 16 hours of community service or a \$25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second or subsequent violation within 12 weeks of the first violation requires a \$25 fine. Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.³⁰

If a person under 18 years of age is found by the court to have committed such a noncriminal violation and that person has failed to complete community service, pay the required fine, or attend a school-approved anti-tobacco and nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 or 45 consecutive days, depending on the infraction.³¹

Eighty percent of civil penalties specific to possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age in making such purchases are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products,

²⁶ Section 877.112(1)(a), F.S.

²⁷ Section 877.112(1)(b), F.S.

²⁸ *Supra* note 5.

²⁹ Section 877.112(5), F.S.

³⁰ Sections 877.112(6) and (7), F.S.

³¹ Section 877.112(8), F.S.

or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.³²

Subsection 877.112(10), F.S., requires a retail dealer of nicotine products and nicotine dispensing devices to post signs that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited. This signage requirement is similar to the signs required for retail tobacco products dealers under s. 569.14, F.S.

Nicotine products or nicotine dispensing devices may not be sold or delivered by self-service merchandising, except when such products are under the direct control of, or in the line of sight where effective control may be reasonably maintained by, the retailer or their agent or employee.³³

To prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, s. 877.112(12), F.S., requires retailers to comply with restrictions identical to the restrictions on the sale of tobacco products in s. 569.007(1), F.S., such as requiring the products to be sold or delivered only when under the direct control or line of sight of the retailer and requiring a lock-out device if the products are sold or delivered from a vending machine.

Regulation of Vaping

During the 2019 legislative session, CS/SB 7012³⁴ was enacted to implement Amendment 9 to the Florida Constitution,³⁵ which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

The use of vapor-generating electronic devices is permitted in the enclosed indoor workplace of a “vapor-generating device retailer” or “retail vape shop,” which is defined as “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.” Vaping is permitted at the same locations authorized to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops, facilities owned or leased by a membership association, smoking cessation program locations, medical or scientific research locations, and customs smoking rooms in airport in-transit lounges.³⁶

Local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.³⁷

³² Section 877.112(9), F.S.

³³ Section 877.112(11), F.S.

³⁴ See ch. 2019-14, Laws of Fla.

³⁵ FLA. CONST. art. X, s. 20.

³⁶ See ch. 386, part II, F.S.

³⁷ *Id.*

The above provisions were approved by the Governor and took effect July 1, 2019.

Unlike the retail sale of tobacco products, which is subject to regulation under ch. 569, F.S., the sale of vape products is only regulated under the provisions of s. 877.112, F.S. While tobacco products in Florida are subject to specific taxation under ch. 210, F.S., nicotine products are only subject to sales taxes.

Rates of Youth Vaping

According to Centers for Disease Control (CDC) latest National Youth Tobacco Surveys, electronic cigarettes (e-cigarettes) were the most commonly used tobacco product among high school (19.6 percent; 3.02 million) and middle school (4.7 percent; 550,000) students.³⁸ The CDC found that:

From 2019 to 2020, decreases in current use of any tobacco product, any combustible tobacco product, multiple tobacco products, e-cigarettes, cigars, and smokeless tobacco occurred among high school and middle school students; these declines resulted in an estimated 1.73 million fewer current youth tobacco product users in 2020 than in 2019 (6.20 million) (3). From 2019 to 2020, no significant change occurred in the use of cigarettes, hookahs, pipe tobacco, or heated tobacco products. The comprehensive and sustained implementation of evidence-based tobacco control strategies at the national, state, and local levels, combined with tobacco product regulation by FDA, is warranted to help sustain this progress and to prevent and reduce all forms of tobacco product use among U.S. youths.³⁹

The study found that use of e-cigarettes declined from 2019 to 2020, reversing previous trends. The declines were likely attributable to multiple factors at the national, state, and local levels. The report noted that “in December 2019, the federal minimum age of sale of all tobacco product types increased from 18 to 21 years.⁴⁰ The report indicated that the FDA issued guidance in January 2020 to prioritize enforcement against certain flavored e-cigarette products that appeal to youths, including mint and fruit flavors.⁴¹ The FDA report further stated that “several states and communities also recently restricted the sale of flavored tobacco products, including e-cigarettes.⁴²

³⁸ Centers for Disease Control and Prevention, *Tobacco Product Use Among Middle and High School Students — United States, 2020, December 18, 2020*, available at [Tobacco Product Use Among Middle and High School Students — United States, 2020 | MMWR \(cdc.gov\)](#) (last visited March 16, 2021).

³⁹ *Id.*

⁴⁰ Food and Drug Administration, *Newly signed legislation raises federal minimum age of sale of tobacco products to 21, 2019*, available at <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21>[external icon](#) (last visited March 16, 2021).

⁴¹ FDA Center for Tobacco Products, *Enforcement priorities for Electronic Nicotine Delivery Systems (ENDS) and other deemed products on the market without premarket authorization (revised)*, available at <https://www.fda.gov/media/133880/download> (last visited March 16, 2021).

⁴² See Campaign for Tobacco Free Kids, *States & Localities that have Restricted the Sale of Flavored Tobacco Products*, available at [0398.pdf \(tobaccofreekids.org\)](#) (last visited March 16, 2021).

Nearly 70 percent of e-cigarette users reported using a flavored product, and the availability of flavors such as mint and chocolate was a reason that many students cited for trying e-cigarettes. The findings came a year after the U.S. Surgeon General declared the surge in youth vaping an epidemic.⁴³

Health Issues Relating to Vaping

The CDC is conducting an ongoing national investigation of vaping-related lung injuries. The CDC, the federal Food and Drug Administration (FDA), state and local health departments, and public health and clinical stakeholders have been investigating and monitoring the nationwide illness outbreak related to vaping. The condition has been labelled “E-cigarette, or Vaping, product use-Associated Lung Injury,” or EVALI. AS of February 18, 2020, the CDC reports that 2,807 people have been hospitalized and 68 people have died across 29 states and Washington, D.C.⁴⁴ Two of the deaths have occurred in Florida, and 103 cases of vaping-related illness hospitalizations have been documented in Florida as of December 3, 2019.⁴⁵

National Minimum Age of Sale of Tobacco Products

As part of the federal budget revisions adopted in December 2019 and signed into law on December 20, 2019, the federal minimum age for the sale of tobacco products was increased to 21 years of age.⁴⁶ The specific tobacco provisions in the budget amended section 906(d) of the Federal Food, Drug, and Cosmetic Act to increase the federal minimum age to purchase tobacco products from 18 to 21 years of age, and to prohibit retailers from selling tobacco products to any person younger than 21 years of age. The provisions also require the FDA to update its applicable tobacco regulations within specified timelines.

As part of the rule update process, the FDA must update the relevant age verification requirements to require age verification for individuals under age 30 (as opposed to the current age verification threshold for individuals under age 27).

U.S. Federal Food and Drug Administration Enforcement

The FDA has “deemed” ENDS products, i.e., vaping products, to be tobacco products.⁴⁷ A brief explanation of “deeming” is helpful in this context. The Family Smoking Prevention and

⁴³ See “Surgeon General Warns Youth Vaping Is Now An ‘Epidemic,’” December 18, 2018, *available at* <https://www.npr.org/sections/health-shots/2018/12/18/677755266/surgeon-general-warns-youth-vaping-is-now-an-epidemic> (last visited March 16, 2021).

⁴⁴ Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, *available at* https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (last visited March 16, 2021).

⁴⁵ See Naseem S. Miller, *Florida reports second vaping death*, Orlando Sentinel, Dec. 11, 2019, *available at* <http://www.orlandosentinel.com/news/os-ne-florida-reports-second-vaping-death-20191211-dvz3tehxebvkcavhe2jdiepe-story.html> (last visited March 16, 2021).

⁴⁶ See the “Further Consolidated Appropriations Act, 2020,” Rules Committee print 116-44, Text of the House Amendment to the Senate Amendment to H.R. 1865, December 16, 2019, beginning at page 1492 of 1773, *available at* <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR1865SA-RCP116-44.PDF> (last visited March 16, 2020).

⁴⁷ See 21 CFR 1100-1143. For all intents and purposes, “Electronic Nicotine Delivery Systems” or ENDS products is a reference to vaping products.

Tobacco Control Act (2009) (the act) authorized the FDA to regulate tobacco products. The act broadly defined “tobacco products” as any product that is “made or derived from tobacco” and that is “intended for human consumption.” However, the act, when passed, immediately applied to a few products, namely cigarettes, cigarette tobacco, smokeless tobacco, and roll-your-own tobacco. To regulate any other tobacco products, the act requires the FDA to assert jurisdiction through regulation. In other words, for the FDA to start regulating cigars, e-cigarettes, hookah, and other products not regulated by the federal government, the FDA must create a rule through its formal notice-and-comment rulemaking process. A rule, or regulation, that extends the FDA’s jurisdiction to all tobacco products is often referred to as a Deeming Regulation because the language of the act states that the FDA can regulate additional tobacco products that it “deems to be subject” to the act.⁴⁸

New tobacco products may not be legally marketed in the United States without a tobacco product marketing order from the FDA, which evaluates based on the product's risks to the population as a whole. A “new tobacco product” is:

- Any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or
- Any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.⁴⁹

The affected products include:

- Any flavored, cartridge-based ENDS product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors’ access; and
- Any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.⁵⁰

There are three pathways to market for a person intending to market new tobacco products:

- A premarketing order issued by the FDA after submission of a premarket application;
- A finding by the FDA that the product is “substantial equivalent” to a “predicate” product and does not raise different questions of public health that the predicate product; and
- Receiving an exemption from demonstrating substantial equivalence.⁵¹

⁴⁸ See *Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products*, available at <https://www.federalregister.gov/documents/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the> (Feb. 26, 2021.) See also Tobacco Control Legal Consortium, *A Deeming Regulation: What is Possible Under the Law*, available at <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-deeming-reg-what-is-possible-2014.pdf> (last visited March 16, 2021).

⁴⁹ Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §910(a)(1).

⁵⁰ *Supra*, note 48.

⁵¹ FDA, *Market and Distribute a Tobacco Product*, available at <https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product> (last visited March 16, 2021).

New tobacco products commercially marketed after February 15, 2007, but before March 22, 2011, with a Substantial Equivalency Report submitted by March 22, 2011, are known as “provisional SE tobacco products” and may continue to be marketed unless FDA issues an order that the new product is not substantially equivalent.⁵²

III. Effect of Proposed Changes:

The bill creates a separate licensing structure for the sale of “nicotine dispensing devices” and “nicotine products,” by creating a new part of ch. 569, F.S., to regulate the sale of such products. Under the bill:

- Tobacco products would be regulated under part I of ch. 569, F.S., consisting of ss. 569.002 through 569.23, F.S., which comprise the current provisions in ch. 569, F.S.
- Nicotine products would be regulated under part II, consisting of ss. 569.31 through 569.45, F.S., which includes the requirements in current law for the sale of nicotine products, and additional provisions for regulating nicotine product sales the same as currently apply to the regulation of tobacco product sales.

The bill changes the title of ch. 569, F.S., from “Tobacco Products” to “Tobacco and Nicotine Products,” and directs the Division of Law Revision to create parts I and II of ch. 569, F.S., entitled “Tobacco Products” and “Nicotine Products,” respectively.

The bill preempts to the state the establishment of a minimum age for purchasing or possessing tobacco or nicotine products as well as regulation of the marketing, sale, or delivery of tobacco or nicotine products.

Tobacco Products

The bill increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age. It revises the minimum age requirements in the relevant provisions in ch. 210 and in ch. 569, F.S., including:

- Section 210.095(5), F.S., relating to mail order, Internet, and remote sales of tobacco products, and age verification related for such sales. The bill also requires the individual making a delivery of tobacco products to require the person accepting delivery to provide proof of their legal minimum purchase age if the individual appears to be under 30 years of age, rather than the current 27 years of age. (This latter provision is modified to ensure conformity with recent federal law provisions.)⁵³
- Section 210.15 (1)(b), F.S., relating to the qualification for a person applying for a permit for the sale of tobacco products.
- Sections 569.007(1) and (2), F.S., relating to the prohibition on the sale or delivery of tobacco products to an underage person.
- Section 569.101, F.S., relating to the prohibition and penalties against the sale, delivery, barter, furnishing, or giving of tobacco products to an underage person.
- Section 569.11, F.S., relating to the prohibition on the possession of tobacco products by underage persons.

⁵² *Id.*

⁵³ *Supra* note 47.

- Section 569.14, F.S., revising the signage requirements for dealers of tobacco products.

The bill revises the definition of the term “any person under the age of 18,” to “any person under the age of 21” and deletes the exemptions for persons who have had the disability of nonage removed under ch. 743, F.S., and emancipated minors. Under the bill, the prohibitions against the sale of tobacco products to, and possession of tobacco products by, persons under 21 years of age would apply to such persons. Persons in the military reserve or active duty in the Armed Forces of the United States and persons acting within the scope of lawful employment, if under the age of 21, would not be prohibited from possessing or purchasing tobacco products.

The bill also amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree. The incorrect reference to a misdemeanor of the third degree is deleted.

Smoking and Vaping Near School Property

The bill amends s. 386.212, F.S., to increase the applicable age from 18 years of age to 21 years of age in the prohibition against smoking and vaping on or near school property during the hours of 6 a.m. to midnight and related penalties.

Nicotine Dispensing Devices and Nicotine Products

Definitions

The bill creates s. 569.31, F.S., to define the terms used in part II of ch. 569, F.S.

The bill defines the term “nicotine dispensing device” to mean “any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.”

The bill defines the term “nicotine product” to mean “any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means.” The term “nicotine product” also includes any nicotine dispensing device.

Under the bill, the following products are not considered to be nicotine products:

- Tobacco products;
- Products regulated as a drug or device by the FDA; or
- Products that contain incidental nicotine.

The definitions of “nicotine dispensing device” and “nicotine product” in the bill are the same as the terms are currently defined in s. 877.112, F.S.

Section 569.31, F.S., defines the term “any person under the age of 21” to not include any person under the age of 21 who is:

- In the military reserve or on active duty in the Armed Forces of the United States; or
- Acting in his or her scope of lawful employment.⁵⁴

Retail Nicotine Products Dealer Permits

The bill creates s. 569.32, F.S., to require persons who deal, at retail, in nicotine products or who allow a nicotine products vending machine to be located in their premises, to obtain a retail nicotine products dealer permit from the division. This permit does not allow for the sale of tobacco products. However, the holder of a retail tobacco products dealer permit may sell nicotine products without an additional permit.

The bill requires a person to obtain a retail nicotine products dealer permit for each place of business or the premises where nicotine products are to be sold face-to-face or through a vending machine, but no fee is provided for the permit. The division may only issue permits to persons who are 21 years or older or corporations with officers who are 21 years or older. The bill provides the place or premises covered by a permit is subject to inspection and search without a search warrant by the division, or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for nicotine sales and dealing.

The provisions for the issuance and renewal of a retail nicotine products dealer permit are comparable to the requirements for a retail tobacco products dealer permit. However, the bill does not require a retail dealer to pay a fee for a retail nicotine products dealer permit.

Section 569.33, F.S., provides that a retail nicotine products dealer, by accepting a permit, consents to the inspection and search of the place or premises covered by the permit without a warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with part II of ch. 569, F.S.⁵⁵

Section 569.34, F.S., prohibits the dealing, at retail, of nicotine products. A person who violates this prohibition commits a noncriminal violation, punishable by a fine of not more than \$500.⁵⁶ However, a retail tobacco products dealer is not required to have a separate or additional permit to deal, at retail, in nicotine products.

Section 569.35, F.S., provides administrative penalties for a violation of the requirements in part II of ch. 569, F.S. Under the bill, the division may assess a fine of up to \$1,000 for a violation. All fines collected must be deposited by the division into the General Revenue Fund. The division may also suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.⁵⁷

⁵⁴ See s. 569.002(9), F.S., as amended by the bill, providing a comparable provision for the retail tobacco products dealer permit.

⁵⁵ See s. 569.004, F.S., providing a comparable provision for the retail tobacco products dealer permit.

⁵⁶ See s. 569.005, F.S., providing a comparable provision, including the same penalty, for the retail tobacco products dealer permit.

⁵⁷ See s. 569.006, F.S., providing a comparable provision for the retail tobacco products dealer permit.

Section 569.39, F.S., authorizes the division to adopt rules to administer part II of ch. 569, F.S.

Nicotine Products and Persons Under the Age of 21

The bill repeals s. 877.112, F.S., which currently regulates the retail sale nicotine products in this state, including the sale of such products to, and possession by, minors. The requirements of s. 877.112, F.S., are incorporated into part II of ch. 569, F.S., and revised to increase the minimum lawful age to 21 from 18 years of age as follows:

- Section 569.37, F.S., requires sales and deliveries of nicotine products to be under the direct control or line of sight of the dealer or the dealer's agent or employee. If the sale or delivery is made through a vending machine, the vending machine must be equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product. The bill also prohibits sales by means of self-merchandising, which is an open display of products providing the consumer with direct access to nicotine products. However, self-merchandising is permitted if the establishment prohibits persons under 21 years of age on the licensed premises.⁵⁸
- Section 569.41(1), F.S., prohibits the sale, delivery, barter, furnishing, or giving (sale or delivery) of nicotine products to underage persons;⁵⁹
- Section 569.41(2), F.S., provides criminal penalties for the sale or delivery of nicotine products to underage persons of a misdemeanor of the second degree for a first violation and a misdemeanor of the first degree for second of subsequent violation within one year of the first violation.⁶⁰
- Section 569.41(3), F.S., provides the following affirmative defenses for a person charged with such a violation:⁶¹
 - The buyer falsely represented that he or she was 21 years of age or older;
 - The appearance of the buyer would indicate, to a prudent person, that the buyer was 21 years of age or older; and
 - The person carefully checked a driver license or identification card and acted in good faith in reliance upon the representation and appearance of the buyer or recipient in the belief the buyer or recipient of 21 years of age or older.
- Section 569.38, F.S., prohibits the gifting of nicotine product samples to underage persons;⁶²
- Sections 569.42(1) through (5), F.S., prohibit the knowing possession of nicotine products by persons under the lawful minimum age, prohibiting the misrepresentation of age or military service for the purpose of inducing a dealer or an agent or servant of a dealer to sell or deliver any nicotine product, and providing that any person who violates such prohibitions commits a non-criminal violation, punishable as follows:
 - A first violation carries a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco and anti-nicotine program, if locally available.
 - A second violation within 12 weeks of the first violation is punishable with a \$25 fine.

⁵⁸ See ss. 877.112(11) and (12), F.S.

⁵⁹ See s. 877.112(2), F.S.

⁶⁰ See s. 877.112(4), F.S.

⁶¹ See s. 877.112(5), F.S.

⁶² See s. 877.112(3), F.S.

- A court may suspend or withhold issuance of a driver's license for persons under 21 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase nicotine products.⁶³
- Section 569.42(6), F.S., requires 80 percent of all civil penalties received from violating prohibitions related to the possession or sale of nicotine products by a county court to be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of nicotine products and nicotine products by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.⁶⁴
- Section 569.43, F.S., requires nicotine product retailers to post a clear and conspicuous sign that the sale of nicotine products is prohibited to persons under the age of 21 and that proof of age is required for purchase.⁶⁵

The bill creates s. 569.381, to provide a process to encourage a retail nicotine products dealer to comply with responsible practices to prevent the sale of nicotine products to persons under 21 years of age. This process is the same as is currently provided in s. 569.008, F.S., for retail tobacco product dealers. Under the bill, if the division finds that a retail nicotine products retailer's employee has illegally sold nicotine products to a person under 21 years of age, the division may mitigate penalties if:

- The nicotine product retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the nicotine product retailer's employees comply with Florida laws regulating the sale of nicotine products, such as employee training;
- The nicotine product retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; and
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Annual Report

Section 569.44, F.S., requires the division to submit an annual report, by December 31, to the Governor and Legislature on the progress of implementing and enforcing the above requirements, including:

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid permit;
- The number of violations for selling nicotine products to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of such citation.⁶⁶

⁶³ See ss. 877.112(6), (7), and (8), F.S.

⁶⁴ See s. 877.112(9), F.S.

⁶⁵ See s. 877.112(10), F.S.

⁶⁶ See s. 569.19, F.S., providing a comparable provision for the retail tobacco products dealer permit.

Mail Order, Internet, and Other Remote Sales of Nicotine Products in Florida

Section 569.45, F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of nicotine products, referred to as “delivery sales.”⁶⁷ Under the bill, each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 30 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

Before the first delivery to a consumer, the bill requires the person mailing, shipping, or delivering the nicotine products to:

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting the delivery is an adult, and a written statement under penalty of perjury providing the person’s date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person’s ID;
- Provide the person accepting the delivery a notice stating nicotine products are illegal for underage youths and sales of such products are restricted to individuals who provide verifiable proof of legal age to purchase;
- Receive payment by a credit card or debit card in the name of the person accepting the delivery or a personal or company check of the person accepting the delivery, if the order is made in accordance with an advertisement on the Internet;
- Submit to the credit card company necessary information so that the words “nicotine product” appear on the person’s credit card statement when a purchase is made using a credit card; and
- Make a phone call to the person accepting the delivery to confirm the order before shipping the order.

The bill requires a person who accepts a purchase order for a delivery sale and delivers the nicotine products without using a delivery service to comply with all of the delivery service requirements.

⁶⁷ See s. 210.095, F.S., providing comparable provisions for delivery sales of tobacco products.

The bill imposes a penalty for knowingly violating the delivery sale requirements as a misdemeanor of the second degree.⁶⁸

Effective Date

The effective date of the bill is October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19 of the State Constitution requires a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the State Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

Article VII, Section 19 of the State Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

Under the bill, a fee for a retail nicotine products dealer permit is not imposed.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁶⁸ *Supra*, note 6.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) may incur indeterminate expenses related to personnel costs or modification of operational priorities needed to accommodate the additional licensure of dealers of vapor-generating electronic devices, which will not be offset by a permit fee.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Age of Tobacco Purchase in Other States**

As of January 1, 2021, 31 states have raised the tobacco purchase age to 21 years of age, along with Washington, DC, and over 500 localities.⁶⁹ In Florida, Alachua County and the City of Fort Lauderdale have raised their minimum age for purchase of tobacco products to 21 years of age.⁷⁰

Age Restrictions on Youth Access to Electronic Cigarettes in Other States

As of December 15, 2020, all states and the District of Columbia have laws that restrict youth access to electronic cigarettes, or e-cigarettes. In this context, *e-cigarette* broadly refers to any product, and its component parts and accessories, that contains nicotine and/or other substances intended for use in the form of an aerosol, often referred to as vapor. In 32 states, the restriction is set at age 21. Two states set the restriction at age 19. In 16 states, the restriction is set at age 18. There are certain exceptions and exemptions that are applicable within any given state.⁷¹

The bill amends s. 569.002(6), F.S., to modify the definition of “tobacco products” in the context of the regulation of the retail sale of tobacco products. Section 210.25(11), F.S., relating to the taxation of on tobacco products other than cigarettes or cigars, also defines the term “tobacco products.” Because the bill does not revise the definition of “tobacco products” in part II ch. 210, F.S., which governs the excise tax and surcharge imposed and collected on tobacco products other than cigars and cigarettes, the bill does not affect:

- The taxation of vapor-generating electronic devices;

⁶⁹ See Campaign for Tobacco-Free Kids, *States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21*, available at https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (last visited March 16, 2021).

⁷⁰ *Id.*

⁷¹ See Public Health Law Center at Mitchell Hamline School of Law, “Youth Access to E-Cigarettes, States with Laws Restricting Youth Access to E-Cigarettes, Enacted as of December 15, 2020,” available at <https://www.publichealthlawcenter.org/sites/default/files/States-with-Laws-Restricting-Youth-Access-to-ECigarettes-Dec2020.pdf> (last visited March 16, 2021).

- The collection of excise taxes and surcharge taxes on other tobacco products; or
- The licensure, reporting, and recordkeeping of manufacturers and distributors of vapor-generating electronic devices or other tobacco products.

Types of Nicotine Devices Subject to Federal Enforcement Priorities

The nicotine devices that are subject to enhanced enforcement by the FDA are cartridge-based nicotine devices. Tank-based vaping devices will not be subject to enhanced federal FDA enforcement.⁷²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.095, 210.15, 386.212, 569.002, 569.003, 569.004, 569.006, 569.007, 569.0075, 569.008, 569.009, 569.101, 569.11, 569.12, 569.14, and 569.19.

This bill creates the following sections of the Florida Statutes: 569.0025, 569.31, 569.315, 569.32, 569.33, 569.34, 569.35, 569.37, 569.38, 569.381, 569.39, 567.41, 569.42, 569.43, 569.44, and 569.45.

This bill repeals section 877.112 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Policy on March 24, 2021:

The committee substitute creates ss. 569.0025 and 569.315, F.S., to preempt to the state the establishment of a minimum age for purchasing or possessing tobacco or nicotine products as well as regulation of the marketing, sale, or delivery of tobacco or nicotine products.

CS by Regulated Industries on March 9, 2021:

The committee substitute:

- Creates a separate licensing structure for the sale of “nicotine dispensing devices” and nicotine products, by creating a new part II in ch. 569, F.S., to regulate the sale of such products.
- Regulates tobacco products under part I consisting of ss. 569.002 through 569.23, F.S., which consists of the current law provisions.
- Regulates nicotine products under part II, consisting of ss. 569.31 through 569.45, F.S., which includes the requirements in current law for the sale of nicotine products and additional provisions for the regulation of nicotine product sales the same as currently apply to the regulation of tobacco product sales.
- Does not define the term tobacco products to include nicotine products.

⁷² *Supra* note 48.

- Defines the term “nicotine dispensing device” and the term “vapor-generating electronic device.”
- Requires nicotine products retail dealers to have a permit issued by the Division of Alcoholic Beverages and Tobacco, but does not require a fee.
- Retains the exemption in the definition for “any person under the age of 21” for underage persons in the military and persons acting in the scope of lawful employment.
- Revises the prohibition against smoking and vaping on or near school property to apply to persons under 21 years, and does not apply the prohibition to all hours of the day.
- Amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree, and deleting the incorrect reference to a misdemeanor of the third degree.
- Does not amend s. 569.007(1), F.S., to provide that sales of tobacco products from a vending machine are only permissible from a machine that is located in an establishment that prohibits persons under age 21 on the licensed premises at all times.
- Removes the provision in the bill limiting the sale of tobacco products through vending machines to a location that prohibit persons under 21 years of age on the premises.
- Does not create s. 569.101(4), F.S., to require a person to verify that a person purchasing a tobacco product is not under 21 years of age, and specify the type of documentation that may be used to verify age.
- Makes several technical and conforming changes to the bill.

B. Amendments:

None.