

By Senator Hutson

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1 A bill to be entitled
2 An act relating to tobacco and nicotine products;
3 amending s. 210.15, F.S.; revising the age limits for
4 permits relating to cigarettes; amending s. 386.212,
5 F.S.; revising age and time restrictions relating to
6 the prohibition of smoking and vaping near school
7 property; amending s. 569.002, F.S.; revising the
8 definition of the term "tobacco products"; defining
9 the term "vapor-generating electronic device";
10 deleting the term "any person under the age of 18";
11 amending s. 569.003, F.S.; revising the age limits for
12 retail tobacco products dealer permits; amending s.
13 569.007, F.S.; revising prohibitions on the sale of
14 tobacco products from vending machines; conforming
15 provisions to federal law; amending s. 569.101, F.S.;
16 requiring that the age of persons purchasing tobacco
17 products be verified under certain circumstances;
18 repealing s. 877.112, F.S., relating to nicotine
19 products and nicotine dispensing devices; amending ss.
20 210.095, 569.0075, 569.008, 569.11, 569.12, 569.14,
21 and 569.19, F.S.; conforming provisions to federal
22 law; conforming provisions to changes made by the act;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (b) of subsection (1) of section
28 210.15, Florida Statutes, is amended to read:
29 210.15 Permits.—

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30 (1)

31 (b) Permits shall be issued only to persons of good moral
32 character who are not less than 21 ~~18~~ years of age. Permits to
33 corporations shall be issued only to corporations whose officers
34 are of good moral character and not less than 21 ~~18~~ years of
35 age. There shall be no exemptions from the permit fees herein
36 provided to any persons, association of persons, or corporation,
37 any law to the contrary notwithstanding.

38 Section 2. Subsection (1) of section 386.212, Florida
39 Statutes, is amended to read:

40 386.212 Smoking and vaping prohibited near school property;
41 penalty.—

42 (1) It is unlawful for any person under 21 ~~18~~ years of age
43 to smoke tobacco or vape in, on, or within 1,000 feet of the
44 real property comprising a public or private elementary, middle,
45 or secondary school ~~between the hours of 6 a.m. and midnight.~~
46 This section does not apply to any person occupying a moving
47 vehicle or within a private residence.

48 Section 3. Subsections (6) and (7) of section 569.002,
49 Florida Statutes, are amended to read:

50 569.002 Definitions.—As used in this chapter, the term:

51 (6) "Tobacco products" includes:

52 (a) Any product containing, made of, or derived from
53 tobacco or nicotine that is intended for human consumption or is
54 likely to be consumed, whether inhaled, absorbed, or ingested by
55 any other means, including, but not limited to, a cigarette, a
56 cigar, pipe tobacco, chewing tobacco, snuff, or snus;

57 (b) Any vapor-generating electronic device and any
58 substances that may be aerosolized or vaporized by such device,

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59 whether or not the substance contains nicotine; or

60 (c) Any component, part, or accessory of a product
61 described in paragraph (a) or paragraph (b), whether or not any
62 of these contain tobacco or nicotine, including, but not limited
63 to, filters, rolling papers, blunt or hemp wraps, and pipes.

64
65 The term does not include drugs, devices, or combination
66 products authorized for sale by the United States Food and Drug
67 Administration, as those terms are defined in the Federal Food,
68 Drug, and Cosmetic Act ~~loose tobacco leaves, and products made~~
69 ~~from tobacco leaves, in whole or in part, and cigarette~~
70 ~~wrappers, which can be used for smoking, sniffing, or chewing.~~

71 (7) "Vapor-generating electronic device" means any product
72 that employs an electronic, chemical, or mechanical means
73 capable of producing vapor or aerosol from a nicotine product or
74 any other substance, including, but not limited to, an
75 electronic cigarette, electronic cigar, electronic cigarillo,
76 electronic pipe, or other similar device or product; any
77 replacement cartridge for such device; and any other container
78 of nicotine in a solution or other substance form intended to be
79 used with or within an electronic cigarette, an electronic
80 cigar, an electronic cigarillo, an electronic pipe, a vape pen,
81 an electronic hookah, or other similar device or product. The
82 term includes any component, part, or accessory of the device
83 and also includes any substance intended to be aerosolized or
84 vaporized during the use of the device, whether or not the
85 substance contains nicotine.

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87 The term does not include drugs, devices, or combination

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88 products authorized for sale by the United States Food and Drug
89 Administration, as those terms are defined in the Federal Food,
90 Drug, and Cosmetic Act ~~"Any person under the age of 18" does not~~
91 ~~include any person under the age of 18 who:~~

92 ~~(a) Has had his or her disability of nonage removed under~~
93 ~~chapter 743;~~

94 ~~(b) Is in the military reserve or on active duty in the~~
95 ~~Armed Forces of the United States;~~

96 ~~(c) Is otherwise emancipated by a court of competent~~
97 ~~jurisdiction and released from parental care and responsibility;~~
98 ~~or~~

99 ~~(d) Is acting in his or her scope of lawful employment with~~
100 ~~an entity licensed under the provisions of chapter 210 or this~~
101 ~~chapter.~~

102 Section 4. Paragraph (a) of subsection (2) of section
103 569.003, Florida Statutes, is amended to read:

104 569.003 Retail tobacco products dealer permits;
105 application; qualifications; fees; renewal; duplicates.—

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

109 Section 5. Subsections (1) and (2) of section 569.007,
110 Florida Statutes, are amended to read:

111 569.007 Sale or delivery of tobacco products;
112 restrictions.—

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

116 (a) When under the direct control or line of sight of the

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117 dealer or the dealer's agent or employee; or

118 (b) Sales from a vending machine are prohibited under ~~the~~
119 ~~provisions of paragraph (1)(a) and are only permissible from a~~
120 machine located in an establishment that prohibits persons under
121 21 years of age on the licensed premises at all times ~~that is~~
122 ~~equipped with an operational lockout device which is under the~~
123 ~~control of the dealer or the dealer's agent or employee who~~
124 ~~directly regulates the sale of items through the machine by~~
125 ~~triggering the lockout device to allow the dispensing of one~~
126 ~~tobacco product. The lockout device must include a mechanism to~~
127 ~~prevent the machine from functioning if the power source for the~~
128 ~~lockout device fails or if the lockout device is disabled, and a~~
129 ~~mechanism to ensure that only one tobacco product is dispensed~~
130 ~~at a time.~~

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

134 Section 6. Section 569.101, Florida Statutes, is amended to
135 read:

136 569.101 Selling, delivering, bartering, furnishing, or
137 giving tobacco products to persons under 21 ~~18~~ years of age;
138 criminal penalties; defense.—

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

142 (2) Any person who violates subsection (1) commits a
143 misdemeanor of the second degree, punishable as provided in s.
144 775.082 or s. 775.083. However, any person who violates
145 subsection (1) for a second or subsequent time within 1 year of

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146 the first violation, commits a misdemeanor of the first degree,
147 punishable as provided in s. 775.082 or s. 775.083.

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

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

153 (b) The appearance of the buyer or recipient was such that
154 a prudent person would believe the buyer or recipient to be 21
155 ~~18~~ years of age or older; and

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

163 (4) A person must verify by means of identification
164 specified in paragraph (3)(c) that a person purchasing a tobacco
165 product is not under 21 years of age. Such verification is not
166 required for any person over the age of 29.

167 Section 7. Section 877.112, Florida Statutes, is repealed.

168 Section 8. Paragraphs (a) and (b) of subsection (5) of
169 section 210.095, Florida Statutes, are amended to read:

170 210.095 Mail order, Internet, and remote sales of tobacco
171 products; age verification.—

172 (5) Each person who mails, ships, or otherwise delivers
173 tobacco products in connection with an order for a delivery sale
174 must:

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175 (a) Include as part of the shipping documents, in a clear
176 and conspicuous manner, the following statement: "Tobacco
177 Products: Florida law prohibits shipping to individuals under 21
178 ~~18~~ years of age and requires the payment of all applicable
179 taxes."

180 (b) Use a method of mailing, shipping, or delivery which
181 obligates the delivery service to require:

182 1. The individual submitting the order for the delivery
183 sale or another adult who resides at the individual's address to
184 sign his or her name to accept delivery of the shipping
185 container. Proof of the legal minimum purchase age of the
186 individual accepting delivery is required only if the individual
187 appears to be under 30 ~~27~~ years of age.

188 2. Proof that the individual is either the addressee or the
189 adult designated by the addressee, in the form of a valid,
190 government-issued identification card bearing a photograph of
191 the individual who signs to accept delivery of the shipping
192 container.

193
194 If the person accepting a purchase order for a delivery sale
195 delivers the tobacco products without using a delivery service,
196 the person must comply with all of the requirements of this
197 section which apply to a delivery service. Any failure to comply
198 with a requirement of this section constitutes a violation
199 thereof.

200 Section 9. Section 569.0075, Florida Statutes, is amended
201 to read:

202 569.0075 Gift of sample tobacco products prohibited.—The
203 gift of sample tobacco products to any person under the age of

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204 21 ~~18~~ by an entity licensed or permitted under the provisions of
205 chapter 210 or this chapter, or by an employee of such entity,
206 is prohibited and is punishable as provided in s. 569.101.

207 Section 10. Subsection (1), paragraphs (b) and (c) of
208 subsection (2), and subsection (3) of section 569.008, Florida
209 Statutes, are amended to read:

210 569.008 Responsible retail tobacco products dealers;
211 qualifications; mitigation of disciplinary penalties; diligent
212 management and supervision; presumption.—

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

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

224 (b) Methods of recognizing and handling customers under 21
225 ~~18~~ years of age.

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

229 (3) In determining penalties under s. 569.006, the division
230 may mitigate penalties imposed against a dealer because of an
231 employee's illegal sale of a tobacco product to a person under
232 21 ~~18~~ years of age if the following conditions are met:

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

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

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

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

243 Section 11. Section 569.11, Florida Statutes, is amended to
244 read:

245 569.11 Possession, misrepresenting age ~~or military service~~
246 to purchase, and purchase of tobacco products by persons under
247 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
248 disposition of fines.—

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

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

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

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

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262 violation.

263 (2) It is unlawful for any person under 21 ~~18~~ years of age
264 to misrepresent his or her age ~~or military service~~ for the
265 purpose of inducing a dealer or an agent or employee of the
266 dealer to sell, give, barter, furnish, or deliver any tobacco
267 product, or to purchase, or attempt to purchase, any tobacco
268 product from a person or a vending machine. Any person under 21
269 ~~18~~ years of age who violates this subsection commits a
270 noncriminal violation as provided in s. 775.08(3), punishable
271 by:

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

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

278

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

282 (3) Any person under 21 ~~18~~ years of age cited for
283 committing a noncriminal violation under this section must sign
284 and accept a civil citation indicating a promise to appear
285 before the county court or comply with the requirement for
286 paying the fine and must attend a school-approved anti-tobacco
287 program, if locally available. If a fine is assessed for a
288 violation of this section, the fine must be paid within 30 days
289 after the date of the citation or, if a court appearance is
290 mandatory, within 30 days after the date of the hearing.

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

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

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

317 (6) Eighty percent of all civil penalties received by a
318 county court pursuant to this section shall be remitted by the
319 clerk of the court to the Department of Revenue for transfer to

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320 the Department of Education to provide for teacher training and
321 for research and evaluation to reduce and prevent the use of
322 tobacco products by children. The remaining 20 percent of civil
323 penalties received by a county court pursuant to this section
324 shall remain with the clerk of the county court to cover
325 administrative costs.

326 Section 12. Paragraph (b) of subsection (2) and subsection
327 (3) of section 569.12, Florida Statutes, are amended to read:

328 569.12 Jurisdiction; tobacco product enforcement officers
329 or agents; enforcement.—

330 (2)

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

336 (3) A correctional probation officer as defined in s.
337 943.10(3) is authorized to issue a citation to a person under
338 the age of 21 ~~18~~ when, based upon personal investigation, the
339 officer has reasonable cause to believe that the person has
340 committed a civil infraction in violation of s. 569.11.

341 Section 13. Section 569.14, Florida Statutes, is amended to
342 read:

343 569.14 Posting of a sign stating that the sale of tobacco
344 products to persons under 21 ~~18~~ years of age is unlawful;
345 enforcement; penalty.—

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

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

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

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

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

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

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

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)

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378 YOU CANNOT BUY TOBACCO PRODUCTS.

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

381 may use card readers, scanners, or other electronic or automated

382 systems that can verify whether a person is of legal age to

383 purchase tobacco products. Failure to comply with the provisions

384 contained in this subsection shall result in imposition of

385 administrative penalties as provided in s. 569.006.

386 (4)~~(5)~~ The division, through its agents and inspectors,

387 shall enforce this section.

388 (5)~~(6)~~ Any person who fails to comply with subsection (1)

389 is guilty of a misdemeanor of the second degree, punishable as

390 provided in s. 775.082 or s. 775.083.

391 Section 14. Subsections (3) and (4) of section 569.19,

392 Florida Statutes, are amended to read:

393 569.19 Annual report.—The division shall report annually

394 with written findings to the Legislature and the Governor by

395 December 31, on the progress of implementing the enforcement

396 provisions of this chapter. This must include, but is not

397 limited to:

398 (3) The number of violations for selling tobacco products

399 to persons under age 21 ~~18~~, and the results of administrative

400 hearings on the above and related issues.

401 (4) The number of persons under age 21 ~~18~~ cited for

402 violations of s. 569.11 and sanctions imposed as a result of

403 citation.

404 Section 15. This act shall take effect October 1, 2021.