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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2024	.	
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The Appropriations Committee on Agriculture, Environment, and General Government (Perry) recommended the following:

Senate Amendment

Delete lines 163 - 576

and insert:

means either:

(a) An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing or utilizing nicotine derived from tobacco marketed in the United States as of August 8, 2016, which was submitted to the FDA on or before September 9, 2020, and accepted for filing; or



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11 (b) An application pursuant to 21 U.S.C. s. 387j for a
12 nicotine dispensing device containing or utilizing nicotine
13 derived from a non-tobacco source that is not a single use or
14 disposable electronic cigarette, an electronic cigar, an
15 electronic cigarillo, an electronic pipe, or other similar
16 device and that does not use a sealed, prefilled, and disposable
17 cartridge of nicotine in a solution.

18 (14) "Wholesale nicotine products dealer" means the holder
19 of a wholesale nicotine products dealer permit who purchases
20 nicotine dispensing devices or nicotine products from any
21 nicotine product manufacturer.

22 (15) "Wholesale nicotine products dealer permit" means a
23 permit issued by the division under s. 569.316.

24 (1)-(9) "Any person under the age of 21" does not include
25 any person under the age of 21 who:

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

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

29 Section 2. Section 569.311, Florida Statutes, is created to
30 read:

31 569.311 Nicotine dispensing device directory.—

32 (1) By December 1, 2024, and annually thereafter, every
33 nicotine product manufacturer that sells nicotine dispensing
34 devices to any person for eventual retail sale in this state
35 shall execute and deliver a form, prescribed by the division,
36 under penalty of perjury for each such nicotine dispensing
37 device sold that meets either of the following criteria:

38 (a) The manufacturer of a nicotine dispensing device has
39 submitted a timely filed premarket tobacco product application



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40 for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j
41 and remains stayed by a court order, or the manufacturer has
42 filed a timely request for supervisory review with the FDA which
43 remains under review, or the order has been rescinded by the FDA
44 or vacated by a court; or

45 (b) The nicotine product manufacturer has received a
46 marketing granted order under 21 U.S.C. s. 387j for the nicotine
47 dispensing device from the FDA.

48 (2) The form prescribed by the division pursuant to
49 subsection (1) must require each nicotine product manufacturer
50 to set forth the name under which the nicotine product
51 manufacturer transacts or intends to transact business, the
52 address of the location of the nicotine product manufacturer's
53 principal place of business, the nicotine product manufacturer's
54 e-mail address, and the brand name of the nicotine dispensing
55 device, the device's category (e.g., e-liquid, power unit,
56 device, e-liquid cartridge, e-liquid pod, disposable), the
57 device's name, and any flavor utilized with the device that is
58 sold in this state. The division may allow a nicotine product
59 manufacturer to group its nicotine dispensing devices on its
60 certification.

61 (3) In addition to completing the form prescribed by the
62 division pursuant to subsection (1), each nicotine product
63 manufacturer shall provide a copy of the cover page of the
64 granted marketing order issued by the FDA pursuant to 21 U.S.C.
65 s. 387j for each device; a copy of the acceptance letter issued
66 by the FDA pursuant to 21 U.S.C. s. 387j for a timely filed
67 premarket tobacco product application for each device; or a
68 document issued by the FDA or by a court confirming that the



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69 premarket tobacco product application has been received and
70 denied, but the order is not yet in effect for each device.

71 (4) Any nicotine product manufacturer submitting a
72 certification pursuant to subsection (1) shall notify the
73 division within 30 days after any material change to the
74 certification, including, but not limited to, issuance by the
75 FDA of any of the following:

76 (a) A denial of a market authorization pursuant to 21
77 U.S.C. s. 387j;

78 (b) An order requiring a nicotine product manufacturer to
79 remove a nicotine dispensing device or nicotine product from the
80 market either temporarily or permanently;

81 (c) Any notice of action taken by the FDA affecting the
82 ability of the nicotine dispensing device to be introduced or
83 delivered in this state for commercial distribution;

84 (d) Any change in policy which results in a nicotine
85 dispensing device becoming an FDA enforcement priority; or

86 (e) Any other change deemed material by the division
87 pursuant to a rule of the division.

88 (5) The division shall develop and maintain a directory
89 listing all nicotine product manufacturers that sell nicotine
90 dispensing devices in this state and the nicotine dispensing
91 devices certified by those manufacturers with the division which
92 comply with this section. The division shall make the directory
93 available January 1, 2025, on its or the Department of Business
94 and Professional Regulation's website. The division shall update
95 the directory as necessary. The division shall establish a
96 process to provide retailers, distributors, and wholesalers
97 notice of the initial publication of the directory and changes



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98 made to the directory in the prior month.

99 (6) The division shall establish by rule a process to
100 provide a nicotine product manufacturer notice and an
101 opportunity to cure deficiencies before removing the
102 manufacturer or any of its nicotine dispensing devices from the
103 directory.

104 (a) The division may not remove the nicotine product
105 manufacturer or any of its nicotine dispensing devices from the
106 directory until at least 30 days after the nicotine product
107 manufacturer has been given notice of an intended action. Notice
108 is sufficient and deemed immediately received by a nicotine
109 product manufacturer if the notice is sent either electronically
110 or by facsimile to an e-mail address or facsimile number
111 provided by the nicotine product manufacturer in its most recent
112 certification filed under subsection (1).

113 (b) The nicotine product manufacturer has 15 days from the
114 date of service of the notice of the division's intended action
115 to establish that the nicotine product manufacturer or any of
116 its nicotine dispensing devices must be included on the
117 directory.

118 (c) A determination by the division not to include or not
119 to remove a nicotine product manufacturer or nicotine dispensing
120 device from the directory is subject to review under chapter
121 120. If a nicotine product manufacturer seeks review of removal
122 from the directory, the division must keep the nicotine
123 dispensing device on the directory until entry of a final order.

124 (d) If a nicotine dispensing device is removed from the
125 directory, each retailer and each wholesaler holding nicotine
126 dispensing devices for eventual sale to a consumer in this state



127 has 30 days from the day such product is removed from the
128 directory to sell the product or remove the product from its
129 inventory. After 30 days following removal from the directory,
130 the product identified in the notice of removal is contraband
131 and subject to s. 569.345.

132 (7) (a) Except as provided in subsections (b) and (c),
133 beginning March 1, 2025, or on the date that the division first
134 makes the directory available for public inspection on its or
135 the Department of Business and Professional Regulation's
136 website, whichever is later, a nicotine product manufacturer
137 that offers for sale in this state a nicotine dispensing device
138 not listed on the directory is subject to a fine of \$1,000 per
139 day for each individual nicotine dispensing device offered for
140 sale in violation of this section until the offending product is
141 removed from the market or until the offending product is
142 properly listed on the directory.

143 (b) Each retailer shall have 60 days from the date that the
144 division first makes the directory available for inspection on
145 its public website to sell products that were in its inventory
146 and not included on the directory or remove those products from
147 inventory.

148 (c) Each distributor or wholesaler shall have 60 days from
149 the date that the division first makes the directory available
150 for inspection on its public website to remove from inventory
151 those products intended for eventual retail sale to a consumer
152 in this state.

153 (8) A nicotine product manufacturer that falsely represents
154 any of the information required by subsection (1) or subsection
155 (2) commits a felony of the third degree for each false



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156 representation, punishable as provided in s. 775.082 or s.
157 775.083.

158 (9) Each retail nicotine products dealer and wholesale
159 nicotine products dealer is subject to unannounced inspections
160 or audit checks by the division for purposes of enforcing this
161 section. The division shall conduct unannounced follow-up
162 compliance checks of all noncompliant retail nicotine products
163 dealers or wholesale nicotine products dealers within 30 days
164 after any violation of this section. The division shall publish
165 the results of all inspections or audits at least annually and
166 shall make the results available to the public on request.

167 (10) The division may establish by rule a procedure to
168 allow nicotine product manufacturers to renew certifications
169 without having to resubmit all the information required by this
170 section.

171 (11) The failure of a nicotine product manufacturer to
172 provide information or documents required by this section may
173 result in a nicotine dispensing device not being included on the
174 directory or the removal of a nicotine dispensing device from
175 the directory. The division may assess an administrative fine of
176 up to \$1,000 for each nicotine dispensing device offered for
177 sale in this state if a nicotine product manufacturer fails to
178 provide notice to the division of a material change to its
179 certification within 30 days after that material change. The
180 division shall deposit all fines collected into the General
181 Revenue Fund. An order imposing an administrative fine becomes
182 effective 15 days after the date of the order.

183 Section 3. Section 569.312, Florida Statutes, is created to
184 read:



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185 569.312 Maintenance and inspection of nicotine dispensing
186 device records.—

187 (1) Each nicotine product manufacturer that sells nicotine
188 dispensing devices in this state shall maintain and keep for a
189 period of 3 years, at the address listed on the certification
190 required pursuant to s. 569.311, a complete and accurate record
191 of the number of nicotine dispensing devices sold or delivered
192 to a wholesaler in this state and to which each nicotine
193 dispensing device was sold on a wholesale basis, including the
194 business name, license number, shipping and business addresses,
195 e-mail address, and telephone number for the person or entity to
196 which each product was sold. Such records may be kept in an
197 electronic or paper format.

198 (2) Each retail nicotine products dealer; wholesale
199 nicotine product dealer; wholesale dealer, as defined in s.
200 210.01(6); and distributing agent, as defined in s. 210.01(14),
201 shall maintain and keep for a period of 3 years at its principal
202 place of business a complete and accurate record of the quantity
203 of each nicotine dispensing device received, delivered, or sold
204 in this state and to which each nicotine dispensing device was
205 sold or delivered or from which the business received each
206 nicotine dispensing device, including the business name, license
207 number, shipping and business addresses, e-mail address, and
208 telephone number for the person or entity to which each product
209 was sold or delivered or from which each product was received.
210 Such records may be kept in an electronic or paper format.

211 (3) Nicotine product manufacturers that sell nicotine
212 dispensing devices in this state; retail nicotine products
213 dealers; wholesale nicotine products dealers; wholesale dealers,



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214 as defined in s. 210.01(6); and distributing agents, as defined
215 in s. 210.01(14), who sell or deliver nicotine dispensing
216 devices directly to consumers are not required to keep and
217 maintain the name, address, e-mail address, and telephone number
218 of consumers who purchase or receive nicotine dispensing
219 devices.

220 (4) Within 7 calendar days after receiving a request by the
221 division, a nicotine product manufacturer that sells nicotine
222 dispensing devices in this state, including a manufacturer
223 selling nicotine dispensing devices directly to consumers; a
224 retail nicotine products dealer; a wholesale nicotine products
225 dealer; a wholesale dealer, as defined in s. 210.01(6); and a
226 distributing agent, as defined in s. 210.01(14), shall provide
227 to the division or its duly authorized representative copies of
228 records related to the nicotine dispensing devices received,
229 delivered, or sold in this state and to which those nicotine
230 dispensing devices were sold or delivered or from which they
231 were received.

232 (5) The division, or a designated employee thereof, may
233 examine the records required to be maintained by each nicotine
234 product manufacturer, retail nicotine products dealer, wholesale
235 nicotine products dealer, wholesale dealer, as defined in s.
236 210.01(6), and distributing agent, as defined in s. 210.01(14);
237 issue subpoenas to such persons or entities; administer oaths;
238 and take depositions of witnesses within or outside of this
239 state. The civil law of this state regarding enforcing obedience
240 to a subpoena lawfully issued by a judge or other person duly
241 authorized to issue subpoenas under the laws of this state in
242 civil cases applies to a subpoena issued by the division, or any



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243 designated employee thereof. The subpoena may be enforced by
244 writ of attachment issued by the division, or any designated
245 employee, for such witness to compel him or her to appear before
246 the division, or any designated employee, and give his or her
247 testimony and to bring and produce such records as may be
248 required for examination. The division, or any designated
249 employee, may bring an action against a witness who refuses to
250 appear or give testimony by citation before the circuit court,
251 which shall punish such witness for contempt as in cases of
252 refusal to obey the orders and process of the circuit court. The
253 division may in such cases pay such attendance and mileage fees
254 as are permitted to be paid to witnesses in civil cases
255 appearing before the circuit court.

256 (6) The division may assess an administrative fine of up to
257 \$1,000 for each violation of this section. The division shall
258 deposit all fines collected into the General Revenue Fund. An
259 order imposing an administrative fine becomes effective 15 days
260 after the date of the order.

261 Section 4. Section 569.313, Florida Statutes, is created to
262 read:

263 569.313 Shipment of unregistered nicotine dispensing
264 devices sold for retail sale in this state.-

265 (1) A nicotine product manufacturer may not sell, ship, or
266 otherwise distribute a nicotine dispensing device in this state
267 for eventual retail sale to a consumer in this state for which:

268 (a) The FDA has entered an order requiring the nicotine
269 product manufacturer to remove the product from the market
270 either temporarily or permanently, which order has not been
271 stayed by the FDA or a court of competent jurisdiction;



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272 (b) The nicotine product manufacturer has not submitted a
273 timely filed premarket tobacco product application for the
274 nicotine dispensing device;

275 (c) The nicotine product manufacturer's timely filed
276 premarket tobacco product application for the nicotine
277 dispensing device is no longer pending because it was not
278 accepted by the FDA, it was denied by the FDA, or it is subject
279 to any other order or action by the FDA or any court that
280 negatively affects the ability of the product to be introduced
281 or delivered into interstate commerce for commercial
282 distribution in the United States; or

283 (d) The nicotine product manufacturer has not submitted the
284 certification required under this chapter for any of the
285 nicotine dispensing devices intended for eventual retail sale to
286 a consumer in this state.

287 (2) Any person who knowingly ships or receives nicotine
288 dispensing devices in violation of this section commits a
289 misdemeanor of the first degree, punishable as provided in s.
290 775.082 or s. 775.083.

291 (3) The division may also assess an administrative fine of
292 up to \$5,000 for each violation. The division shall deposit all
293 finances collected into the General Revenue Fund. An order imposing
294 an administrative fine becomes effective 15 days after the date
295 of the order.

296 Section 5. Section 569.316, Florida Statutes, is created to
297 read:

298 569.316 Wholesale nicotine products dealer permits;
299 application; qualifications; renewal; duplicates.-

300 (1) (a) Each person, firm, association, or corporation that



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301 seeks to deal, at wholesale, in nicotine products that will be
302 sold at retail within this state, or to sell nicotine products
303 or nicotine dispensing devices to any retail nicotine products
304 dealer who intends to sell those nicotine products in this
305 state, must obtain a wholesale nicotine products dealer permit
306 for each place of business or premises at which nicotine
307 products are sold.

308 (b) Application for a wholesale nicotine products dealer
309 permit must be made on a form furnished by the division and must
310 set forth the name under which the applicant transacts or
311 intends to transact business, the address of the location of the
312 applicant's place of business, the applicant's e-mail address,
313 and any other information the division requires. If the
314 applicant has or intends to have more than one place of business
315 dealing in nicotine products or nicotine dispensing devices, a
316 separate application must be made for each place of business. If
317 the applicant is a firm or an association, the application must
318 set forth the names, e-mail addresses, and addresses of the
319 persons constituting the firm or association. If the applicant
320 is a corporation, the application must set forth the names, e-
321 mail addresses, and addresses of the principal officers of the
322 corporation. The application must also set forth any other
323 information prescribed by the division for the purpose of
324 identifying the applicant firm, association, or corporation. The
325 application must be signed and verified by oath or affirmation
326 by the owner, if a sole proprietor; if the owner is a firm,
327 association, or partnership, by the members or partners thereof;
328 or, if the owner is a corporation, by an executive officer of
329 the corporation or by a person authorized by the corporation to



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330 sign the application, together with the written evidence of this
331 authority.

332 (2) (a) Wholesale nicotine products dealer permits may be
333 issued only to persons who are 21 years of age or older or to
334 corporations the officers of which are 21 years of age or older.

335 (b) The division may refuse to issue a wholesale nicotine
336 products dealer permit to any person, firm, association, or
337 corporation whose permit has been revoked by any jurisdiction;
338 to any corporation an officer of which has had such permit
339 revoked by any jurisdiction; or to any person who is or has been
340 an officer of a corporation whose permit has been revoked by any
341 jurisdiction. The division must revoke any wholesale nicotine
342 products dealer permit issued to a firm, an association, or a
343 corporation prohibited from obtaining such permit under this
344 chapter.

345 (3) Upon approval of an application for a wholesale
346 nicotine products dealer permit, the division shall issue to the
347 applicant a wholesale nicotine products dealer permit for the
348 place of business or premises specified in the application. A
349 wholesale nicotine products dealer permit is not assignable and
350 is valid only for the person in whose name the wholesale
351 nicotine products dealer permit is issued and for the place
352 designated in the wholesale nicotine products dealer permit. The
353 wholesale nicotine products dealer permit must be conspicuously
354 displayed at all times at the place for which it is issued.

355 (4) A wholesale dealer, as defined in s. 210.01(6), or a
356 distributing agent, as defined in s. 210.01(14), is not required
357 to have a separate or additional wholesale nicotine products
358 dealer permit to deal, at wholesale, in nicotine dispensing



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359 devices within this state. A wholesale dealer, as defined in s.
360 210.01(6), a distributing agent, as defined in s. 210.01(14), or
361 a tobacco products distributor, as defined in s. 210.25(5),
362 which deals, at wholesale, in nicotine dispensing devices is
363 subject to, and must be in compliance with, this chapter.

364 Section 6. Section 569.317, Florida Statutes, is created to
365 read:

366 569.317 Wholesale nicotine products dealer permitholder;
367 administrative penalties.—A wholesale nicotine products dealer
368 permitholder may only purchase and sell for retail sale in this
369 state nicotine dispensing devices contained on the directory
370 created by the division pursuant to s. 569.311. The division may
371 suspend or revoke the wholesale nicotine products dealer permit
372 of a wholesale nicotine products dealer permitholder upon
373 sufficient cause appearing of a violation of this part by a
374 wholesale nicotine products dealer permitholder or its agent or
375 employee. The division may also assess an administrative fine of
376 up to \$5,000 for each violation. The division shall deposit all
377 finances collected into the General Revenue Fund. An order imposing
378 an administrative fine becomes effective 15 days after the date
379 of the order. The division may suspend the imposition of a
380 penalty against a wholesale nicotine products dealer
381 permitholder, conditioned upon compliance with terms the
382 division considers appropriate.

383 Section 7. Section 569.32, Florida Statutes, is amended to
384 read:

385 569.32 Retail nicotine products dealer permits;
386 application; qualifications; renewal; duplicates.—

387 (1) (a) Each person, firm, association, or corporation that



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388 seeks to deal, at retail, in nicotine products or nicotine
389 dispensing devices within this ~~the~~ state, or to allow a nicotine
390 products vending machine to be located on its premises in this
391 ~~the~~ state, must obtain a retail nicotine products dealer permit
392 for each place of business or premises at which nicotine
393 products or nicotine dispensing devices are sold. Each dealer
394 owning, leasing, furnishing, or operating vending machines
395 through which nicotine products are sold must obtain a permit
396 for each machine and shall post the permit in a conspicuous
397 place on or near the machine; however, if the dealer has more
398 than one vending machine at a single location or if nicotine
399 products or nicotine dispensing devices are sold both over the
400 counter and through a vending machine at a single location, the
401 dealer need obtain only one permit for that location.

402 (b) Application for a permit must be made on a form
403 furnished by the division and must set forth the name under
404 which the applicant transacts or intends to transact business,
405 the address of the location of the applicant's place of business
406 within this ~~the~~ state, and any other information the division
407 requires. If the applicant has or intends to have more than one
408 place of business dealing in nicotine products or nicotine
409 dispensing devices within this ~~the~~ state, a separate application
410 must be made for each place of business. If the applicant is a
411 firm or an association, the application must set forth the names
412 and addresses of the persons constituting the firm or
413 association; if the applicant is a corporation, the application
414 must set forth the names and addresses of the principal officers
415 of the corporation. The application must also set forth any
416 other information prescribed by the division for the purpose of



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417 identifying the applicant firm, association, or corporation. The
418 application must be signed and verified by oath or affirmation
419 by the owner, if a sole proprietor; or, if the owner is a firm,
420 association, or partnership, by the members or partners thereof;
421 or, if the owner is a corporation, by an executive officer of
422 the corporation or by a person authorized by the corporation to
423 sign the application, together with the written evidence of this
424 authority.

425 (c) Permits must be issued annually.

426 (d) The holder of a permit may renew the permit each year.

427 A dealer that does not timely renew its permit must pay a late
428 fee of \$5 for each month or portion of a month occurring after
429 expiration, and before renewal, of the dealer's permit. The
430 division shall establish by rule a renewal procedure.