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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AD/2R	.	Floor: C
03/05/2024 04:07 PM	.	03/07/2024 07:59 PM
	.	

Senator Perry moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 569.31, Florida Statutes, is amended to
read:

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

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

(2) "Division" means the Division of Alcoholic Beverages



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11 and Tobacco of the Department of Business and Professional
12 Regulation.

13 (3) "FDA" means the United States Food and Drug
14 Administration.

15 (4)~~(3)~~ "Nicotine dispensing device" means any product that
16 employs an electronic, chemical, or mechanical means to produce
17 vapor or aerosol from a nicotine product, including, but not
18 limited to, an electronic cigarette, electronic cigar,
19 electronic cigarillo, electronic pipe, or other similar device
20 or product, any replacement cartridge for such device, and any
21 other container of nicotine in a solution or other form intended
22 to be used with or within an electronic cigarette, electronic
23 cigar, electronic cigarillo, electronic pipe, or other similar
24 device or product. For purposes of this definition, each
25 individual stock keeping unit is considered a separate nicotine
26 dispensing device.

27 (5)~~(4)~~ "Nicotine product" means any product that contains
28 nicotine, including liquid nicotine, which is intended for human
29 consumption, whether inhaled, chewed, absorbed, dissolved, or
30 ingested by any means. The term also includes any nicotine
31 dispensing device. The term does not include a:

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

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

36 (c) Product that contains incidental nicotine.

37 (6) "Nicotine products manufacturer" means any person or
38 entity that manufactures nicotine products.

39 (7)~~(5)~~ "Permit" is synonymous with the term "retail



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40 nicotine products dealer permit.”

41 (8)~~(6)~~ “Retail nicotine products dealer” means the holder
42 of a retail nicotine products dealer permit.

43 (9)~~(7)~~ “Retail nicotine products dealer permit” means a
44 permit issued by the division under s. 569.32.

45 (10)~~(8)~~ “Self-service merchandising” means the open display
46 of nicotine products, whether packaged or otherwise, for direct
47 retail customer access and handling before purchase without the
48 intervention or assistance of the dealer or the dealer’s owner,
49 employee, or agent. An open display of such products and devices
50 includes the use of an open display unit.

51 (11) “Sell” or “sale” means, in addition to its common
52 usage meaning, any sale, transfer, exchange, barter, gift, or
53 offer for sale and distribution, in any manner or by any means.

54 Section 2. Section 569.311, Florida Statutes, is created to
55 read:

56 569.311 Control of nicotine dispensing devices; grant of
57 authority to Attorney General to create a directory of nicotine
58 products attractive to minors.—

59 (1) The Legislature has determined that information,
60 testings, approvals, or scientific evidence may, from time to
61 time, indicate that certain nicotine dispensing devices have a
62 greater potential to be attractive to and be abused by minors
63 than was evident when such devices were allowed on the market.
64 It is the intent of the Legislature to quickly provide a method
65 to allow the state to seek removal of such items from the
66 market.

67 (2) The Attorney General is hereby authorized to adopt
68 rules creating a directory listing nicotine dispensing devices



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69 that are attractive to minors.

70 (3) A nicotine dispensing device is deemed attractive to
71 minors, and the Attorney General shall include it in the
72 directory, if the nicotine dispensing device has features that
73 are significantly appealing to minors as compared to the
74 legitimate benefits those features offer to lawful users of the
75 product. In applying this standard, the Attorney General and
76 reviewing courts shall consider the following:

77 (a) Surveys or other data sources indicating that a
78 nicotine dispensing device is being used by minors at a higher
79 rate than other nicotine dispensing devices.

80 (b) Complaints, reports, or other information related to
81 the use of a nicotine dispensing device by minors from other
82 minors, parents, teachers, school employees, school boards, law
83 enforcement officers, retailers, and other industry related
84 officials as compared to other nicotine dispensing devices.

85 (c) The extent to which the nicotine dispensing device:

86 1. Is designed to be attractive to minors, such as through
87 the use of bright colors or cartoon characters.

88 2. Is designed so that it is easy for minors to use and to
89 conceal.

90 3. Uses or resembles the trade dress of a branded food
91 product, consumer food product, or logo of a food product.

92 4. Is marketed in a manner that uniquely appeals to minors.

93 5. Uses actual copyrights, service marks, or trademarks or
94 fake or actual copyrights, service marks, or trademarks that
95 resemble consumer or food products popular with minors,
96 including the names of candy or cereal products.

97 (d) Any reports of physical harm to minors from using the



98 nicotine dispensing device or evidence that the nicotine
99 dispensing device presents unique risks to minors.

100 (e) Whether the manufacturer of the nicotine dispensing
101 device submitted a timely filed premarket tobacco product
102 application for the nicotine dispensing device pursuant to 21
103 U.S.C. s. 387j.

104 (4) In making the determination in subsection (3), the
105 Attorney General shall consider a decision of the FDA regarding
106 the nicotine dispensing device, if the decision is final and not
107 subject to a stay, by a court or the agency, or subject to a
108 timely petition for supervisory review, and the extent to which
109 the FDA's decision was predicated, in whole or part, on the
110 risks to minors outweighing other benefits of the nicotine
111 dispensing device.

112 (5) Rulemaking under this section shall be in accordance
113 with the procedural requirements of chapter 120, including the
114 emergency rule provisions found in s. 120.54, except that s.
115 120.54(7) does not apply.

116 (6) A determination by the Attorney General under
117 subsections (2) and (3) to include a nicotine dispensing device
118 in the directory is subject to review under chapter 120.

119 (7) This section does not apply to a nicotine dispensing
120 device that has received a marketing granted order under 21
121 U.S.C. s. 387j.

122 (8) This section shall only apply to, and a nicotine
123 dispensing device shall only be subject to this section when, a
124 nicotine dispensing device is either a single-use or disposable
125 electronic cigarette, electronic cigar, electronic cigarillo,
126 electronic pipe, or other similar device that is intended to be



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127 discarded after use, or an electronic cigarette, an electronic
128 cigar, an electronic cigarillo, an electronic pipe, or other
129 similar device that uses a sealed, prefilled, and disposable
130 cartridge of nicotine in a solution. This section does not apply
131 to an electronic cigarette, an electronic cigar, an electronic
132 cigarillo, an electronic pipe, or other similar device that is
133 an open system where a consumer fills a vial or other container
134 with nicotine in a solution.

135 (9) The Department of Legal Affairs shall develop and
136 maintain a directory listing all nicotine product manufacturers
137 that sell nicotine dispensing devices in this state which the
138 Attorney General has deemed attractive to minors under
139 subsections (2) and (3). The department shall make the directory
140 available January 1, 2025, for public inspection on its website.
141 The department shall update the directory as necessary. The
142 department shall establish a process to provide retailers,
143 distributors, and wholesalers notice of the initial publication
144 of the directory and any changes made to the directory.

145 (10) If a nicotine dispensing device is added to the
146 directory, each retailer and each wholesaler holding nicotine
147 dispensing devices for eventual sale to a consumer in this state
148 has 60 days from the day such product is added to the directory
149 to sell the product or remove the product from its inventory.
150 After 60 days following the date a product is added to the
151 directory, the product identified in the directory is contraband
152 and subject to s. 569.345.

153 (11) (a) Except as provided in paragraphs (b) and (c),
154 beginning March 1, 2025, or on the date that the department
155 first makes the directory available for public inspection on its



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156 website, whichever is later, a nicotine product manufacturer
157 that offers for sale in this state a nicotine dispensing device
158 listed on the directory is subject to a fine of \$1,000 per day
159 for each individual nicotine dispensing device offered for sale
160 in violation of this section until the offending product is
161 removed from the market or until the offending product is no
162 longer listed on the directory.

163 (b) Each retailer shall have 60 days from the date that the
164 department first makes the directory available for public
165 inspection on its website to sell products that were in its
166 inventory before that date or remove those products from
167 inventory.

168 (c) Each distributor or wholesaler shall have 60 days from
169 the date that the department first makes the directory available
170 for public inspection on its website to remove from inventory
171 those products intended for eventual retail sale to a consumer
172 in this state.

173 Section 3. Section 569.312, Florida Statutes, is created to
174 read:

175 569.312 Shipment of nicotine dispensing devices sold for
176 retail sale in this state.-

177 (1) A nicotine product manufacturer, a retail nicotine
178 products dealer, a wholesaler, or a distributor may not sell,
179 ship, or otherwise distribute a nicotine dispensing device in
180 this state for eventual retail sale to a consumer in this state
181 that is listed on the directory.

182 (2) Any person who knowingly sells, ships or receives
183 nicotine dispensing devices in violation of this section commits
184 a misdemeanor of the first degree, punishable as provided in s.



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185 775.082 or s. 775.083.

186 (3) A violation of this part is deemed an unfair and
187 deceptive trade practice actionable under part II of chapter 501
188 that can only be enforced by the Department of Legal Affairs. If
189 the department has reason to believe that a person is in
190 violation of this section, the department may, as the sole
191 enforcement authority, bring an action against such person for
192 an unfair or deceptive act or practice. For the purpose of
193 bringing an action pursuant to this section, ss. 501.211 and
194 501.212 do not apply. In addition to other remedies under part
195 II of this chapter, the department may collect a civil penalty
196 of up to \$1,000 per nicotine dispensing device sold, shipped, or
197 otherwise distributed.

198 Section 4. Section 569.345, Florida Statutes, is created to
199 read:

200 569.345 Seizure and destruction of contraband nicotine
201 dispensing devices.—All nicotine dispensing devices sold,
202 delivered, possessed, or distributed contrary to any provision
203 of this chapter are declared to be contraband, are subject to
204 seizure and confiscation under the Florida Contraband Forfeiture
205 Act by any person whose duty it is to enforce this chapter, and
206 must be disposed of as follows:

207 (1) A court having jurisdiction shall order such nicotine
208 dispensing devices forfeited upon a showing that, by a
209 preponderance of the evidence, such devices were sold,
210 delivered, possessed, or distributed contrary to any provision
211 of this chapter. Once any chapter 120 proceedings related to
212 such devices have been completed, the court shall order any
213 seized nicotine dispensing devices destroyed except as provided



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214 by applicable court orders. A record of the place where such
215 devices were seized, the kinds and quantities of such devices
216 destroyed, and the time, place, and manner of the destruction of
217 such devices must be kept, and a return under oath reporting the
218 destruction must be made to the court by the officer who
219 destroys such devices.

220 (2) The Department of Legal Affairs shall keep a full and
221 complete record of all nicotine dispensing devices seized under
222 this section showing:

223 (a) The exact kinds, quantities, and forms of such nicotine
224 dispensing devices;

225 (b) The persons from whom such devices were seized and to
226 whom they were delivered;

227 (c) By whose authority such devices were seized, delivered,
228 and destroyed; and

229 (d) The dates of the seizure, disposal, or destruction of
230 such devices.

231
232 Such record must be open to inspection by all persons charged
233 with the enforcement of tobacco and nicotine product laws.

234 (3) The cost of seizure, confiscation, and destruction of
235 contraband nicotine dispensing devices is borne by the person
236 from whom such products are seized.

237 (4) Except as otherwise provided in this section, the
238 procedures of the Florida Contraband Forfeiture Act apply to
239 this section.

240 Section 5. Section 569.346, Florida Statutes, is created to
241 read:

242 569.346 Agent for service of process.-



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243 (1) Any nonresident manufacturer of nicotine dispensing
244 devices which has not registered to do business in this state as
245 a foreign corporation or business entity shall appoint and
246 continually engage without interruption the services of an agent
247 in this state to act as agent for the service of process on whom
248 all process, and any action or proceeding against it concerning
249 or arising out of the enforcement of this chapter, may be served
250 in any manner authorized by law. Such service constitutes legal
251 and valid service of process on the manufacturer. The
252 manufacturer shall provide the name, address, telephone number,
253 and proof of the appointment and availability of such agent to
254 the division.

255 (2) The manufacturer shall provide notice to the Department
256 of Legal Affairs 30 calendar days before termination of the
257 authority of an agent and shall further provide proof to the
258 satisfaction of the department of the appointment of a new agent
259 no less than 5 calendar days before the termination of an
260 existing agent appointment. In the event an agent terminates an
261 agency appointment, the manufacturer shall notify the department
262 of the termination within 5 calendar days and shall include
263 proof to the satisfaction of the department of the appointment
264 of a new agent.

265 (3) Any manufacturer whose nicotine dispensing devices are
266 sold in this state which has not appointed and engaged the
267 services of an agent as required by this section shall be deemed
268 to have appointed the Secretary of State as its agent for
269 service of process.

270 Section 6. Subsection (2) of section 569.41, Florida
271 Statutes, is amended to read:



272 569.41 Selling, delivering, bartering, furnishing, or
273 giving nicotine products to persons under 21 years of age;
274 criminal penalties; defense.—

275 (2) Any person who violates subsection (1) commits a
276 misdemeanor of the second degree, punishable as provided in s.
277 775.082 or s. 775.083. However, any person who violates
278 subsection (1) for a second or subsequent time within 1 year
279 after the first violation commits a misdemeanor of the first
280 degree, punishable as provided in s. 775.082 or s. 775.083. Any
281 person who violates subsection (1) for a third or subsequent
282 time at any time after the first violation commits a felony of
283 the third degree, punishable as provided in s. 775.082 or s.
284 775.083.

285 Section 7. Subsections (3) and (4) of section 569.002,
286 Florida Statutes, are amended to read:

287 569.002 Definitions.—As used in this part, the term:

288 (3) "Nicotine product" has the same meaning as ~~provided~~ in
289 s. 569.31 ~~s. 569.31(4)~~.

290 (4) "Nicotine dispensing device" has the same meaning as
291 ~~provided~~ in s. 569.31 ~~s. 569.31(3)~~.

292 Section 8. This act shall take effect October 1, 2024.

293
294 ===== T I T L E A M E N D M E N T =====

295 And the title is amended as follows:

296 Delete everything before the enacting clause
297 and insert:

298 A bill to be entitled
299 An act relating to nicotine dispensing devices;
300 amending s. 569.31, F.S.; defining and revising terms;



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301 creating s. 569.311, F.S.; providing legislative
302 findings; authorizing the Attorney General to adopt
303 rules for the creation of a directory listing nicotine
304 dispensing devices for certain purposes; providing the
305 Attorney General with factors that must be considered
306 in determining which nicotine dispensing devices must
307 be listed on such a directory; providing construction;
308 providing that a determination by the Attorney General
309 to include a nicotine dispensing device on the
310 directory is subject to review under ch. 120, F.S.;

311 providing applicability; requiring the Department of
312 Legal Affairs to develop and maintain a directory of
313 all nicotine products manufacturers that sell nicotine
314 dispensing devices in this state which have been
315 listed on the directory by the Attorney General;
316 requiring the department to make the directory
317 available for public inspection on its website by a
318 certain date; providing retailers and wholesalers of a
319 nicotine dispensing device that has been added to the
320 directory a specified timeframe within which they may
321 sell or remove the nicotine dispensing device from
322 inventory; providing that such nicotine dispensing
323 devices are considered contraband after such specified
324 timeframe; providing that nicotine products
325 manufacturers that offer for sale in this state a
326 nicotine dispensing device listed on the directory are
327 subject to a fine for each day the nicotine dispensing
328 device is offered until it is either removed from the
329 market or is no longer listed on the directory;



330 providing retailers, distributors, and wholesalers a
331 specified timeframe in which to remove a nicotine
332 dispensing device from inventory after such device has
333 been listed; creating s. 569.312, F.S.; providing
334 criminal and civil penalties for a person who sells,
335 ships, or otherwise distributes a listed nicotine
336 dispensing device in this state for eventual retail
337 sale; providing that a violation of this section is an
338 unfair and deceptive trade practice; providing that
339 the Department of Legal Affairs is the sole
340 enforcement authority that may bring an action for an
341 unfair or deceptive trade practice under this section;
342 creating s. 569.345, F.S.; declaring nicotine
343 dispensing devices that violate ch. 569, F.S., as
344 contraband subject to seizure and confiscation by
345 certain persons under the Florida Contraband
346 Forfeiture Act; providing procedures for the seizure
347 and destruction of such nicotine dispensing devices;
348 providing applicability; creating s. 569.346, F.S.;
349 requiring nonresident manufacturers of nicotine
350 dispensing devices to appoint an agent in this state
351 to accept service for any action or proceeding against
352 the manufacturer; providing that service upon the
353 agent constitutes service upon the manufacturer;
354 requiring such manufacturers to notify the department
355 of the termination and appointment of an agent within
356 a specified timeframe; providing that the Secretary of
357 State is deemed the agent for manufacturers that do
358 not appoint an agent as required by law; amending s.



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359 569.41, F.S.; revising criminal penalties for those
360 who sell, deliver, barter, furnish, or give a nicotine
361 dispensing device, directly or indirectly, to persons
362 under 21 years of age; amending s. 569.002, F.S.;
363 conforming cross-references; providing an effective
364 date.