

By Senator Calatayud

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1 A bill to be entitled
2 An act relating to nonapproved disposable nicotine
3 dispensing devices; providing a short title; amending
4 s. 569.31, F.S.; defining the term "nonapproved
5 disposable device"; amending s. 569.33, F.S.; revising
6 which permitholders that the premises covered by the
7 permit are subject to inspection and search by the
8 Division of Alcoholic Beverages and Tobacco; revising
9 the provision that, upon being granted a permit, such
10 permitholder also consents to inspections by the
11 Department of Law Enforcement for specified
12 violations; requiring the division to inspect the
13 licensed premises of dealers who sell nonapproved
14 disposable devices; amending s. 569.35, F.S.; revising
15 penalties for violations involving the unlawful sale
16 of nonapproved disposable devices; requiring that
17 administrative fines for certain violations be used by
18 the division and the department for specified
19 purposes; amending s. 569.37, F.S.; prohibiting a
20 dealer who sells nonapproved disposable devices from
21 advertising, promoting, or displaying for sale such
22 devices in certain locations; revising applicability;
23 amending s. 569.39, F.S.; revising the division's
24 rulemaking authority; amending s. 569.44, F.S.;
25 revising the information that must be included in the
26 division's annual report to the Legislature and the
27 Governor; reenacting ss. 569.381(3) and (5) and
28 569.43(3), F.S., relating to responsible retail
29 nicotine products dealers, qualifications, mitigation

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30 of disciplinary penalties, diligent management and
31 supervision, presumption; and posting of a sign
32 stating that the sale of nicotine products or nicotine
33 dispensing devices to persons under 21 years of age is
34 unlawful, enforcement, and penalties, respectively, to
35 incorporate the amendment made to s. 569.35, F.S., in
36 references thereto; providing an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

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40 Section 1. This act may be cited as the "Florida Age Gate
41 Act."

42 Section 2. Section 569.31, Florida Statutes, is reordered
43 and amended to read:

44 569.31 Definitions.—As used in this part, the term:

45 (2)~~(1)~~ "Dealer" is synonymous with the term "retail
46 nicotine products dealer."

47 (3)~~(2)~~ "Division" means the Division of Alcoholic Beverages
48 and Tobacco of the Department of Business and Professional
49 Regulation.

50 (4)~~(3)~~ "FDA" means the United States Food and Drug
51 Administration.

52 (5)~~(4)~~ "Nicotine dispensing device" means any product that
53 employs an electronic, chemical, or mechanical means to produce
54 vapor or aerosol from a nicotine product, including, but not
55 limited to, an electronic cigarette, electronic cigar,
56 electronic cigarillo, electronic pipe, or other similar device
57 or product, any replacement cartridge for such device, and any
58 other container of nicotine in a solution or other form intended

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59 to be used with or within an electronic cigarette, electronic
60 cigar, electronic cigarillo, electronic pipe, or other similar
61 device or product. For purposes of this definition, each
62 individual stock keeping unit is considered a separate nicotine
63 dispensing device.

64 (6)~~(5)~~ "Nicotine product" means any product that contains
65 nicotine, including liquid nicotine, which is intended for human
66 consumption, whether inhaled, chewed, absorbed, dissolved, or
67 ingested by any means. The term also includes any nicotine
68 dispensing device. The term does not include a:

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

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

73 (c) Product that contains incidental nicotine.

74 (7)~~(6)~~ "Nicotine products manufacturer" means any person or
75 entity that manufactures nicotine products.

76 (9)~~(7)~~ "Permit" is synonymous with the term "retail
77 nicotine products dealer permit."

78 (10)~~(8)~~ "Retail nicotine products dealer" means the holder
79 of a retail nicotine products dealer permit.

80 (11)~~(9)~~ "Retail nicotine products dealer permit" means a
81 permit issued by the division under s. 569.32.

82 (12)~~(10)~~ "Self-service merchandising" means the open
83 display of nicotine products, whether packaged or otherwise, for
84 direct retail customer access and handling before purchase
85 without the intervention or assistance of the dealer or the
86 dealer's owner, employee, or agent. An open display of such
87 products and devices includes the use of an open display unit.

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88 ~~(13)~~~~(11)~~ "Sell" or "sale" means, in addition to its common
89 usage meaning, any sale, transfer, exchange, barter, gift, or
90 offer for sale and distribution, in any manner or by any means.

91 ~~(1)~~~~(12)~~ "Any person under the age of 21" does not include
92 any person under the age of 21 who:

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

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

96 (8) "Nonapproved disposable device" means a disposable or
97 single-use nicotine dispensing device as defined in this section
98 which has not received a marketing granted order under 21 U.S.C.
99 s. 387j.

100 Section 3. Section 569.33, Florida Statutes, is amended to
101 read:

102 569.33 Consent to inspection and search without warrant.—

103 (1) An applicant for a retail nicotine products dealer
104 permit or a retail tobacco products dealer permit issued under
105 s. 569.003, by accepting the permit when issued, agrees that the
106 place or premises covered by the permit is subject to inspection
107 and search without a search warrant by the division or its
108 authorized assistants, and by sheriffs, deputy sheriffs, or
109 police officers, to determine compliance with this part. An
110 applicant also consents to inspection and search without a
111 search warrant of the licensed premises by the Department of Law
112 Enforcement to determine compliance with this part relating to
113 the unlawful sale of nonapproved disposable devices or the
114 unlawful advertising, promotion, or display for sale of such
115 devices.

116 (2) The division shall conduct regular inspections of the

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117 licensed premises of dealers who sell nonapproved disposable
118 devices to ensure compliance with this part.

119 Section 4. Section 569.35, Florida Statutes, is amended to
120 read:

121 569.35 Retail nicotine product dealers; administrative and
122 criminal penalties.—

123 (1) The division may suspend or revoke the permit of a
124 dealer, including the retail tobacco products dealer permit of a
125 retail tobacco products dealer as defined in s. 569.002(4), upon
126 sufficient cause appearing of the violation of any of the
127 provisions of this part, by a dealer, or by a dealer's agent or
128 employee.

129 (2) (a) Except as provided in paragraph (b), the division
130 may also assess and accept an administrative fine of up to
131 \$1,000 against a dealer for each violation. The division shall
132 deposit all fines collected under this paragraph into the
133 General Revenue Fund as collected.

134 (b) For each violation involving the unlawful sale of
135 nonapproved disposable devices or the unlawful advertising,
136 promotion, or display for sale of such devices, the division may
137 impose the following penalties:

138 1. For a first violation, an administrative fine of at
139 least \$500, but not more than \$1,000, and an order requiring
140 that corrective action be taken within 15 days to preclude a
141 recurrence;

142 2. For a second violation within 12 weeks after the first
143 violation, an administrative fine of \$1,000 and up to a 30-day
144 suspension of the dealer's retail nicotine products dealer
145 permit; or

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146 3. For a third or subsequent violation within 12 weeks
147 after the first violation, an administrative fine of at least
148 \$2,500, but not more than \$5,000, and at least a 30-day
149 suspension or revocation of the dealer's nicotine products
150 dealer permit.

151
152 Any second or subsequent violation outside the 12-week period
153 after the first violation is punishable as provided for a first
154 violation. The division shall deposit one-half of all fines
155 collected under this paragraph into the Professional Regulation
156 Trust Fund, and the remaining one-half of the fines collected
157 shall be deposited into the Department of Law Enforcement
158 Operating Trust Fund.

159 (c) In addition to any administrative penalties authorized
160 under subparagraph (b)3., a dealer, or a dealer's agent or
161 employee, who commits a third or subsequent violation within 12
162 weeks after the first violation commits a misdemeanor of the
163 second degree, punishable as provided in s. 775.082 or s.
164 775.083.

165 (3) An order imposing an administrative fine becomes
166 effective 15 days after the date of the order. The division may
167 suspend the imposition of a penalty against a dealer,
168 conditioned upon the dealer's compliance with terms the division
169 considers appropriate.

170 (4) Administrative fines collected under paragraph (2) (b)
171 shall be used by the division and the Department of Law
172 Enforcement to do all of the following:

173 (a) Increase enforcement personnel.

174 (b) Fund compliance inspections and investigations.

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175 (c) Develop and implement public awareness campaigns to
176 reduce nicotine use by persons under the age of 21.

177 Section 5. Present subsections (3) and (4) of section
178 569.37, Florida Statutes, are redesignated as subsections (4)
179 and (5), respectively, a new subsection (3) is added to that
180 section, and present subsection (3) of that section is amended,
181 to read:

182 569.37 Sale or delivery of nicotine products;
183 restrictions.—

184 (3) A dealer who sells nonapproved disposable devices may
185 not:

186 (a) Advertise, promote, or display for sale such
187 nonapproved disposable devices in any location that is visible
188 to persons outside of the dealer's licensed premises.

189 (b) Advertise, promote, or display for sale such
190 nonapproved disposable devices within the dealer's licensed
191 premises in a manner visible to any person under the age of 21,
192 including, but not limited to, placement of the devices in an
193 open display unit located in an area visible to any person under
194 the age of 21.

195 (4)~~(3)~~ The provisions of Subsections (1), and (2), and (3)
196 do shall not apply to an establishment that prohibits persons
197 under 21 years of age on the licensed premises.

198 Section 6. Section 569.39, Florida Statutes, is amended to
199 read:

200 569.39 Rulemaking authority.—The division shall adopt rules
201 to administer and enforce this part. The rules must include
202 guidelines for compliance audits and enforcement actions
203 pertaining to the sale, advertising, promotion, and display for

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204 sale of nonapproved disposable devices.

205 Section 7. Present subsections (3) and (4) of section
206 569.44, Florida Statutes, are redesignated as subsections (4)
207 and (5), respectively, and a new subsection (3) is added to that
208 section, to read:

209 569.44 Annual report.—The division shall report annually
210 with written findings to the Legislature and the Governor by
211 December 31 on the progress of implementing the enforcement
212 provisions of this part. This must include, but is not limited
213 to:

214 (3) The number of violations for any advertising,
215 promotion, or display of nonapproved disposable devices
216 prohibited by s. 569.37(3).

217 Section 8. For the purpose of incorporating the amendment
218 made by this act to section 569.35, Florida Statutes, in
219 references thereto, subsections (3) and (5) of section 569.381,
220 Florida Statutes, are reenacted to read:

221 569.381 Responsible retail nicotine products dealers;
222 qualifications; mitigation of disciplinary penalties; diligent
223 management and supervision; presumption.—

224 (3) In determining penalties under s. 569.35, the division
225 may mitigate penalties imposed against a dealer because of an
226 employee's illegal sale of a nicotine product to a person under
227 21 years of age if the following conditions are met:

228 (a) The dealer is qualified as a responsible dealer under
229 this section.

230 (b) The dealer provided the training program required under
231 subsection (2) to that employee before the illegal sale
232 occurred.

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

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

238 (5) Dealers shall exercise diligence in the management and
239 supervision of their premises and in the supervision and
240 training of their employees, agents, or servants. In proceedings
241 to impose penalties under s. 569.35, proof that employees,
242 agents, or servants of the dealer, while in the scope of their
243 employment, committed at least three violations of s. 569.41
244 during a 180-day period shall be prima facie evidence of a lack
245 of due diligence by the dealer in the management and supervision
246 of his or her premises and in the supervision and training of
247 employees, agents, officers, or servants.

248 Section 9. For the purpose of incorporating the amendment
249 made by this act to section 569.35, Florida Statutes, in a
250 reference thereto, subsection (3) of section 569.43, Florida
251 Statutes, is reenacted to read:

252 569.43 Posting of a sign stating that the sale of nicotine
253 products or nicotine dispensing devices to persons under 21
254 years of age is unlawful; enforcement; penalty.-

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

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IF YOU WERE NOT BORN BEFORE THIS DATE

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...(insert date and applicable year)...

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YOU CANNOT BUY TOBACCO PRODUCTS,

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NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

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

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

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

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purchase nicotine products. Failure to comply with the

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provisions contained in this subsection shall result in

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imposition of administrative penalties as provided in s. 569.35.

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Section 10. This act shall take effect July 1, 2025.