

By the Committee on Regulated Industries; and Senator Calatayud

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A bill to be entitled

An act relating to nicotine dispensing devices; creating a short title; reordering and amending s. 569.31, F.S.; defining the term "non-FDA-authorized nicotine dispensing device"; amending s. 569.33, F.S.; requiring an applicant for a retail nicotine products dealer permit to consent to inspections and searches of the licensed premises by the Department of Law Enforcement for specified purposes; requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to conduct regular inspections of licensed premises of dealers that sell non-FDA-authorized nicotine dispensing devices to ensure compliance; amending s. 569.35, F.S.; providing civil and criminal penalties for retail tobacco products dealers that sell or advertise, promote, or display for sale non-FDA-authorized nicotine dispensing devices; requiring the division to deposit all fines collected into the Alcoholic Beverage and Tobacco Trust Fund; requiring the division and the Department of Law Enforcement to use the administrative fines assessed for specified purposes; conforming a cross-reference; amending s. 569.37, F.S.; prohibiting certain dealers that sell non-FDA-authorized nicotine dispensing devices from advertising, promoting, or displaying such devices if such dealers do not prohibit persons younger than 21 years of age on the licensed premises; providing applicability; conforming cross-references; amending

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30 s. 569.39, F.S.; revising the rules to be adopted by
31 the division; amending s. 569.44, F.S.; revising the
32 requirements of the division's annual report to the
33 Legislature and the Governor; providing an effective
34 date.

35

36 Be It Enacted by the Legislature of the State of Florida:

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38 Section 1. This act may be cited as the "Florida Age-Gate
39 Act."

40 Section 2. Section 569.31, Florida Statutes, is reordered
41 and amended to read:

42 569.31 Definitions.—As used in this part, the term:

43 (2)-(1) "Dealer" is synonymous with the term "retail
44 nicotine products dealer."

45 (3)-(2) "Division" means the Division of Alcoholic Beverages
46 and Tobacco of the Department of Business and Professional
47 Regulation.

48 (4)-(3) "FDA" means the United States Food and Drug
49 Administration.

50 (5)-(4) "Nicotine dispensing device" means any product that
51 employs an electronic, chemical, or mechanical means to produce
52 vapor or aerosol from a nicotine product, including, but not
53 limited to, an electronic cigarette, electronic cigar,
54 electronic cigarillo, electronic pipe, or other similar device
55 or product, any replacement cartridge for such device, and any
56 other container of nicotine in a solution or other form intended
57 to be used with or within an electronic cigarette, electronic
58 cigar, electronic cigarillo, electronic pipe, or other similar

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59 device or product. For purposes of this definition, each
60 individual stock keeping unit is considered a separate nicotine
61 dispensing device.

62 (6)-(5) "Nicotine product" means any product that contains
63 nicotine, including liquid nicotine, which is intended for human
64 consumption, whether inhaled, chewed, absorbed, dissolved, or
65 ingested by any means. The term also includes any nicotine
66 dispensing device. The term does not include a:

67 (a) Tobacco product, as defined in s. 569.002;
68 (b) Product regulated as a drug or device by the United
69 States Food and Drug Administration under Chapter V of the
70 Federal Food, Drug, and Cosmetic Act; or
71 (c) Product that contains incidental nicotine.

72 (7)-(6) "Nicotine products manufacturer" means any person or
73 entity that manufactures nicotine products.

74 (8) "Non-FDA-authorized nicotine dispensing device" means
75 any nicotine dispensing device, including any single-use device,
76 nonrefillable closed system cartridge device, or disposable
77 device, which has not received a marketing authorization order
78 under 21 U.S.C. s. 387j from the United States Food and Drug
79 Administration.

80 (9)-(7) "Permit" is synonymous with the term "retail
81 nicotine products dealer permit."

82 (10)-(8) "Retail nicotine products dealer" means the holder
83 of a retail nicotine products dealer permit.

84 (11)-(9) "Retail nicotine products dealer permit" means a
85 permit issued by the division under s. 569.32.

86 (12)-(10) "Self-service merchandising" means the open
87 display of nicotine products, whether packaged or otherwise, for

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88 direct retail customer access and handling before purchase
89 without the intervention or assistance of the dealer or the
90 dealer's owner, employee, or agent. An open display of such
91 products and devices includes the use of an open display unit.

92 (13)(11) "Sell" or "sale" means, in addition to its common
93 usage meaning, any sale, transfer, exchange, barter, gift, or
94 offer for sale and distribution, in any manner or by any means.

95 (1)(12) "Any person under the age of 21" does not include
96 any person under the age of 21 who:

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

99 (b) Is acting within the scope of in his or her ~~scope of~~
100 lawful employment.

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

103 569.33 Consent to inspection and search without warrant.—

104 (1) An applicant for a retail nicotine products dealer
105 permit, 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.

110 (2) In addition to subsection (1), an applicant consents to
111 inspection and search without a search warrant of the licensed
112 premises by the Department of Law Enforcement for violations
113 involving the unlawful sale, advertising, promotion, or display
114 for sale of non-FDA-authorized nicotine dispensing devices as
115 defined in s. 569.31.

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

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117 licensed premises of dealers that sell non-FDA-authorized
118 nicotine dispensing 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
122 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 ~~s.~~
126 ~~569.002(4)~~, upon sufficient cause appearing of the violation of
127 any of the provisions of this part, by a dealer, or by a
128 dealer's agent or 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. Except as provided
132 in paragraph (b), the division shall deposit all fines collected
133 into the General Revenue Fund as collected.

134 (b) For each violation of s. 569.37(3) involving the sale
135 of a non-FDA-authorized nicotine dispensing device, or the
136 advertising, promoting, or displaying for sale of such device,
137 the division may impose the following penalties:

138 1. For a first violation, an administrative fine not to
139 exceed \$1,000 but not less than \$500, a 7-day suspension of the
140 dealer's permit, and an order requiring corrective action within
141 15 days.

142 2. For a second violation within 36 months after the first
143 violation, an administrative fine not to exceed \$5,000 but not
144 less than \$2,500, a 14-day suspension of the dealer's permit,
145 and an order requiring corrective action within 3 days.

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146 3. For a third violation within 36 months after the first
147 violation, an administrative fine not to exceed \$20,000, but not
148 less than \$5,000, and revocation of the dealer's permit.

149 (3) A dealer, or a dealer's agent or employee, who commits
150 a third or subsequent violation of s. 569.37(3) within 12 weeks
151 after the first violation commits a misdemeanor of the second
152 degree, punishable as provided in s. 775.082 or s. 775.083.

153 (4) An order imposing an administrative fine becomes
154 effective 15 days after the date of the order. The division may
155 suspend the imposition of a penalty against a dealer,
156 conditioned upon the dealer's compliance with terms the division
157 considers appropriate.

158 (5) The division shall deposit all fines collected under
159 paragraph (2)(b) into the Alcoholic Beverage and Tobacco Trust
160 Fund. The division and the Department of Law Enforcement shall
161 use the administrative fines assessed pursuant to subsection (2)
162 to:

163 (a) Increase enforcement personnel;
164 (b) Fund compliance inspections and investigations; and
165 (c) Develop and implement public awareness campaigns to
166 reduce nicotine use by persons younger than 21 years of age.

167 Section 5. Section 569.37, Florida Statutes, is amended to
168 read:

169 569.37 Sale or delivery of nicotine products; restrictions;
170 exemptions.—

171 (1) In order to prevent persons younger than under 21 years
172 of age from purchasing or receiving nicotine products, the sale
173 or delivery of nicotine products is prohibited, except:

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

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

176 (b) Sales from a vending machine are prohibited under
177 paragraph (a) and are only permissible from a machine that is
178 equipped with an operational lockout device that is under the
179 control of the dealer or the dealer's agent or employee who
180 directly regulates the sale of items through the machine by
181 triggering the lockout device to allow the dispensing of one
182 nicotine product. The lockout device must include a mechanism to
183 prevent the machine from functioning if the power source for the
184 lockout device fails or if the lockout device is disabled and a
185 mechanism to ensure that only one nicotine product is dispensed
186 at a time.

187 (2) (a) A dealer that sells nicotine products may not sell,
188 permit to be sold, offer for sale, or display for sale such
189 products or devices by means of self-service merchandising.

190 (b) A dealer that sells nicotine products may not place
191 such products or devices in an open display unit unless the unit
192 is located in an area that is inaccessible to customers.

193 (3) (a) A dealer that allows persons younger than 21 years
194 of age on the licensed premises, and that sells a non-FDA-
195 authorized nicotine dispensing device, may not advertise,
196 promote, or display for sale such device in a manner that is
197 visible to:

198 1. Any person outside the licensed premises; or
199 2. Any person younger than 21 years of age who is inside
200 the licensed premises, including any open display unit.

201 (b) A dealer that prohibits persons younger than 21 years
202 of age on the licensed premises, and that sells a nicotine
203 dispensing device that has received a marketing authorization

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204 order under 21 U.S.C. s. 387j, may advertise, promote, or
205 display for sale such device in areas visible inside or outside
206 the licensed premises.

207 (c) Paragraph (a) does not apply to a nicotine dispensing
208 device that has received an FDA marketing authorization order
209 issued under 21 U.S.C. s. 387j, sold in compliance with this
210 section, including:

211 1. Each stock-keeping unit marketed by the manufacturer
212 within the same brand family as the authorized product; and

213 2. Closed-system, replaceable-cartridge devices designed
214 exclusively for use with a proprietary, reusable, rechargeable
215 device for which a marketing authorization order has been
216 granted.

217 (5)-(3) The provisions of Subsections (1) and (2) do not
218 shall not apply to an establishment that prohibits persons
219 younger than under 21 years of age on the licensed premises.

220 (4) A dealer or a dealer's agent or employee shall must
221 require proof of age of a purchaser of a nicotine product before
222 selling the product to that person, unless the purchaser appears
223 to be 30 years of age or older.

224 Section 6. Section 569.39, Florida Statutes, is amended to
225 read:

226 569.39 Rulemaking authority.—The division shall adopt rules
227 to administer and enforce this part. The rules must include
228 guidelines for compliance audits and enforcement actions
229 pertaining to the advertising, promoting, or displaying for sale
230 of any non-FDA-authorized nicotine dispensing devices and must
231 expressly authorize establishments that prohibit persons younger
232 than 21 years of age on the licensed premises to sell single-use

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233 nicotine dispensing devices that have not received a marketing
234 authorization order issued under 21 U.S.C. s. 387j, consistent
235 with s. 569.37(3).

236 Section 7. Present subsection (3) of section 569.44,
237 Florida Statutes, is redesignated as subsection (4) and amended,
238 and a new subsection (3) is added to that section, to read:

239 569.44 Annual report.—The division shall report annually
240 with written findings to the Legislature and the Governor by
241 December 31 on the progress of implementing the enforcement
242 provisions of this part. This must include, but is not limited
243 to:

244 (3) The number of dealers cited for violations of s.
245 569.37(3) for advertising, promoting, or displaying for sale a
246 non-FDA-authorized nicotine dispensing device, and the penalties
247 imposed.

248 (4) (3) The number of violations for selling nicotine
249 products to persons younger than under age 21 years of age and
250 the results of administrative hearings on the above and related
251 issues.

252 Section 8. This act shall take effect July 1, 2026.