

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Product that contains incidental nicotine.

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

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

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

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

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

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

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

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

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

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

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

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

569.33 Consent to inspection and search without warrant.—

(1) An applicant for a retail nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

569.39 Rulemaking authority.—The division shall adopt rules to administer and enforce this part. The rules must include guidelines for compliance audits and enforcement actions pertaining to the advertising, promoting, or displaying for sale of any non-FDA-authorized nicotine dispensing devices and must expressly authorize establishments that prohibit persons younger 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.