

By Senator Rouson

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1 A bill to be entitled
2 An act relating to tobacco products; amending s.
3 569.008, F.S.; revising legislative intent to conform
4 to changes made by the act; amending s. 569.101, F.S.;
5 revising the prohibited age for provisions related to
6 the sale, bartering, furnishing, delivery, gift, and
7 possession of tobacco products; amending ss. 210.095,
8 386.212, 569.002, 569.007, 569.0075, 569.11, 569.12,
9 569.14, and 569.19, F.S.; conforming provisions to
10 changes made by the act; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsections (1), (2), and (3) of section
15 569.008, Florida Statutes, are amended to read:

16 569.008 Responsible retail tobacco products dealers;
17 qualifications; mitigation of disciplinary penalties; diligent
18 management and supervision; presumption.—

19 (1) The Legislature intends to prevent the sale of tobacco
20 products to persons under 21 ~~18~~ years of age and to encourage
21 retail tobacco products dealers to comply with responsible
22 practices in accordance with this section.

23 (2) To qualify as a responsible retail tobacco products
24 dealer, the dealer must establish and implement procedures
25 designed to ensure that the dealer's employees comply with the
26 provisions of this chapter. The dealer must provide a training
27 program for the dealer's employees which addresses the use and
28 sale of tobacco products and which includes at least the
29 following topics:

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30 (a) Laws covering the sale of tobacco products.

31 (b) Methods of recognizing and handling customers under 21
32 ~~18~~ years of age.

33 (c) Procedures for proper examination of identification
34 cards in order to verify that customers are not under 21 ~~18~~
35 years of age.

36 (d) The use of the age audit identification function on
37 electronic point-of-sale equipment, where available.

38 (3) In determining penalties under s. 569.006, the division
39 may mitigate penalties imposed against a dealer because of an
40 employee's illegal sale of a tobacco product to a person under
41 21 ~~18~~ years of age if the following conditions are met:

42 (a) The dealer is qualified as a responsible dealer under
43 this section.

44 (b) The dealer provided the training program required under
45 subsection (2) to that employee before the illegal sale
46 occurred.

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

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

52 Section 2. Section 569.101, Florida Statutes, is amended to
53 read:

54 569.101 Selling, delivering, bartering, furnishing, or
55 giving tobacco products to persons under 21 ~~18~~ years of age;
56 criminal penalties; defense.—

57 (1) It is unlawful to sell, deliver, barter, furnish, or
58 give, directly or indirectly, to any person who is under 21 ~~18~~

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59 years of age, any tobacco product.

60 (2) Any person who violates subsection (1) commits a
61 misdemeanor of the second degree, punishable as provided in s.
62 775.082 or s. 775.083. However, any person who violates
63 subsection (1) for a second or subsequent time within 1 year of
64 the first violation, commits a misdemeanor of the first degree,
65 punishable as provided in s. 775.082 or s. 775.083.

66 (3) A person charged with a violation of subsection (1) has
67 a complete defense if, at the time the tobacco product was sold,
68 delivered, bartered, furnished, or given:

69 (a) The buyer or recipient falsely evidenced that she or he
70 was 21 ~~18~~ years of age or older;

71 (b) The appearance of the buyer or recipient was such that
72 a prudent person would believe the buyer or recipient to be 21
73 ~~18~~ years of age or older; and

74 (c) Such person carefully checked a driver license or an
75 identification card issued by this state or another state of the
76 United States, a passport, or a United States armed services
77 identification card presented by the buyer or recipient and
78 acted in good faith and in reliance upon the representation and
79 appearance of the buyer or recipient in the belief that the
80 buyer or recipient was 21 ~~18~~ years of age or older.

81 Section 3. Paragraph (a) of subsection (5) of section
82 210.095, Florida Statutes, is amended to read:

83 210.095 Mail order, Internet, and remote sales of tobacco
84 products; age verification.—

85 (5) Each person who mails, ships, or otherwise delivers
86 tobacco products in connection with an order for a delivery sale
87 must:

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88 (a) Include as part of the shipping documents, in a clear
89 and conspicuous manner, the following statement: "Tobacco
90 Products: Florida law prohibits shipping to individuals under 21
91 ~~18~~ years of age and requires the payment of all applicable
92 taxes."

93
94 If the person accepting a purchase order for a delivery sale
95 delivers the tobacco products without using a delivery service,
96 the person must comply with all of the requirements of this
97 section which apply to a delivery service. Any failure to comply
98 with a requirement of this section constitutes a violation
99 thereof.

100 Section 4. Subsection (1) of section 386.212, Florida
101 Statutes, is amended to read:

102 386.212 Smoking prohibited near school property; penalty.-

103 (1) It is unlawful for any person under 21 ~~18~~ years of age
104 to smoke tobacco in, on, or within 1,000 feet of the real
105 property comprising a public or private elementary, middle, or
106 secondary school between the hours of 6 a.m. and midnight. This
107 section does not apply to any person occupying a moving vehicle
108 or within a private residence.

109 Section 5. Subsection (7) of section 569.002, Florida
110 Statutes, is amended to read:

111 569.002 Definitions.-As used in this chapter, the term:

112 (7) "Under 21 years of age ~~Any person under the age of 18~~"
113 does not include any person under the age of 21 ~~18~~ who:

114 (a) Has had his or her disability of nonage removed under
115 chapter 743;

116 (b) Is in the military reserve or on active duty in the

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117 Armed Forces of the United States;

118 (c) Is otherwise emancipated by a court of competent
119 jurisdiction and released from parental care and responsibility;
120 or

121 (d) Is acting in his or her scope of lawful employment with
122 an entity licensed under the provisions of chapter 210 or this
123 chapter.

124 Section 6. Subsections (1) and (2) of section 569.007,
125 Florida Statutes, are amended to read:

126 569.007 Sale or delivery of tobacco products;
127 restrictions.—

128 (1) In order to prevent persons under 21 ~~18~~ years of age
129 from purchasing or receiving tobacco products, the sale or
130 delivery of tobacco products is prohibited, except:

131 (a) When under the direct control or line of sight of the
132 dealer or the dealer's agent or employee; or

133 (b) Sales from a vending machine are prohibited under the
134 provisions of paragraph (1)(a) and are only permissible from a
135 machine that is equipped with an operational lockout device
136 which is under the control of the dealer or the dealer's agent
137 or employee who directly regulates the sale of items through the
138 machine by triggering the lockout device to allow the dispensing
139 of one tobacco product. The lockout device must include a
140 mechanism to prevent the machine from functioning if the power
141 source for the lockout device fails or if the lockout device is
142 disabled, and a mechanism to ensure that only one tobacco
143 product is dispensed at a time.

144 (2) The provisions of subsection (1) shall not apply to an
145 establishment that prohibits persons under 21 ~~18~~ years of age on

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146 the licensed premises.

147 Section 7. Section 569.0075, Florida Statutes, is amended
148 to read:

149 569.0075 Gift of sample tobacco products prohibited.—The
150 gift of sample tobacco products to any person under 21 years of
151 age ~~the age of 18~~ by an entity licensed or permitted under the
152 provisions of chapter 210 or this chapter, or by an employee of
153 such entity, is prohibited and is punishable as provided in s.
154 569.101.

155 Section 8. Section 569.11, Florida Statutes, is amended to
156 read:

157 569.11 Possession, misrepresenting age or military service
158 to purchase, and purchase of tobacco products by persons under
159 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
160 disposition of fines.—

161 (1) It is unlawful for any person under 21 ~~18~~ years of age
162 to knowingly possess any tobacco product. Any person under 21 ~~18~~
163 years of age who violates the provisions of this subsection
164 commits a noncriminal violation as provided in s. 775.08(3),
165 punishable by:

166 (a) For a first violation, 16 hours of community service
167 or, instead of community service, a \$25 fine. In addition, the
168 person must attend a school-approved anti-tobacco program, if
169 locally available;

170 (b) For a second violation within 12 weeks of the first
171 violation, a \$25 fine; or

172 (c) For a third or subsequent violation within 12 weeks of
173 the first violation, the court must direct the Department of
174 Highway Safety and Motor Vehicles to withhold issuance of or

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175 suspend or revoke the person's driver license or driving
176 privilege, as provided in s. 322.056.

177
178 Any second or subsequent violation not within the 12-week time
179 period after the first violation is punishable as provided for a
180 first violation.

181 (2) It is unlawful for any person under 21 ~~18~~ years of age
182 to misrepresent his or her age or military service for the
183 purpose of inducing a dealer or an agent or employee of the
184 dealer to sell, give, barter, furnish, or deliver any tobacco
185 product, or to purchase, or attempt to purchase, any tobacco
186 product from a person or a vending machine. Any person under 21
187 ~~18~~ years of age who violates a provision of this subsection
188 commits a noncriminal violation as provided in s. 775.08(3),
189 punishable by:

190 (a) For a first violation, 16 hours of community service
191 or, instead of community service, a \$25 fine and, in addition,
192 the person must attend a school-approved anti-tobacco program,
193 if available;

194 (b) For a second violation within 12 weeks of the first
195 violation, a \$25 fine; or

196 (c) For a third or subsequent violation within 12 weeks of
197 the first violation, the court must direct the Department of
198 Highway Safety and Motor Vehicles to withhold issuance of or
199 suspend or revoke the person's driver license or driving
200 privilege, as provided in s. 322.056.

201
202 Any second or subsequent violation not within the 12-week time
203 period after the first violation is punishable as provided for a

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204 first violation.

205 (3) Any person under 21 ~~18~~ years of age cited for
206 committing a noncriminal violation under this section must sign
207 and accept a civil citation indicating a promise to appear
208 before the county court or comply with the requirement for
209 paying the fine and must attend a school-approved anti-tobacco
210 program, if locally available. If a fine is assessed for a
211 violation of this section, the fine must be paid within 30 days
212 after the date of the citation or, if a court appearance is
213 mandatory, within 30 days after the date of the hearing.

214 (4) A person charged with a noncriminal violation under
215 this section must appear before the county court or comply with
216 the requirement for paying the fine. The court, after a hearing,
217 shall make a determination as to whether the noncriminal
218 violation was committed. If the court finds the violation was
219 committed, it shall impose an appropriate penalty as specified
220 in subsection (1) or subsection (2). A person who participates
221 in community service shall be considered an employee of the
222 state for the purpose of chapter 440, for the duration of such
223 service.

224 (5) (a) If a person under 21 ~~18~~ years of age is found by the
225 court to have committed a noncriminal violation under this
226 section and that person has failed to complete community
227 service, pay the fine as required by paragraph (1) (a) or
228 paragraph (2) (a), or attend a school-approved anti-tobacco
229 program, if locally available, the court must direct the
230 Department of Highway Safety and Motor Vehicles to withhold
231 issuance of or suspend the driver license or driving privilege
232 of that person for a period of 30 consecutive days.

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233 (b) If a person under 21 ~~18~~ years of age is found by the
234 court to have committed a noncriminal violation under this
235 section and that person has failed to pay the applicable fine as
236 required by paragraph (1) (b) or paragraph (2) (b), the court must
237 direct the Department of Highway Safety and Motor Vehicles to
238 withhold issuance of or suspend the driver license or driving
239 privilege of that person for a period of 45 consecutive days.

240 (6) Eighty percent of all civil penalties received by a
241 county court pursuant to this section shall be remitted by the
242 clerk of the court to the Department of Revenue for transfer to
243 the Department of Education to provide for teacher training and
244 for research and evaluation to reduce and prevent the use of
245 tobacco products by children. The remaining 20 percent of civil
246 penalties received by a county court pursuant to this section
247 shall remain with the clerk of the county court to cover
248 administrative costs.

249 Section 9. Paragraph (b) of subsection (2) and subsection
250 (3) of section 569.12, Florida Statutes, are amended to read:

251 569.12 Jurisdiction; tobacco product enforcement officers
252 or agents; enforcement.-

253 (2)

254 (b) A tobacco product enforcement officer is authorized to
255 issue a citation to a person under 21 years of age ~~the age of 18~~
256 when, based upon personal investigation, the officer has
257 reasonable cause to believe that the person has committed a
258 civil infraction in violation of s. 386.212 or s. 569.11.

259 (3) A correctional probation officer as defined in s.
260 943.10(3) is authorized to issue a citation to a person under 21
261 years of age ~~the age of 18~~ when, based upon personal

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262 investigation, the officer has reasonable cause to believe that
263 the person has committed a civil infraction in violation of s.
264 569.11.

265 Section 10. Section 569.14, Florida Statutes, is amended to
266 read:

267 569.14 Posting of a sign stating that the sale of tobacco
268 products to persons under 21 ~~18~~ years of age is unlawful;
269 enforcement; penalty.—

270 (1) A dealer that sells tobacco products shall post a clear
271 and conspicuous sign in each place of business where such
272 products are sold which substantially states the following:
273 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE
274 ~~THE AGE OF 18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED
275 FOR PURCHASE.

276 (2) A dealer that sells tobacco products and nicotine
277 products or nicotine dispensing devices, as defined in s.
278 877.112, may use a sign that substantially states the following:
279 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE,
280 AND NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS
281 UNDER ~~THE AGE OF 18~~ YEARS OF AGE, IS AGAINST FLORIDA LAW. PROOF
282 OF AGE IS REQUIRED FOR PURCHASE.

283 A dealer that uses a sign as described in this subsection meets
284 the signage requirements of subsection (1) and s. 877.112.

285 (3) The division shall make available to dealers of tobacco
286 products signs that meet the requirements of subsection (1) or
287 subsection (2).

288 (4) Any dealer that sells tobacco products shall provide at
289 the checkout counter in a location clearly visible to the dealer
290 or the dealer's agent or employee instructional material in a

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291 calendar format or similar format to assist in determining
292 whether a person is of legal age to purchase tobacco products.
293 This point of sale material must contain substantially the
294 following language:

295 IF YOU WERE NOT BORN BEFORE THIS DATE
296 (insert date and applicable year)
297 YOU CANNOT BUY TOBACCO PRODUCTS.

298 Upon approval by the division, in lieu of a calendar a dealer
299 may use card readers, scanners, or other electronic or automated
300 systems that can verify whether a person is of legal age to
301 purchase tobacco products. Failure to comply with the provisions
302 contained in this subsection shall result in imposition of
303 administrative penalties as provided in s. 569.006.

304 (5) The division, through its agents and inspectors, shall
305 enforce this section.

306 (6) Any person who fails to comply with subsection (1) is
307 guilty of a misdemeanor of the second degree, punishable as
308 provided in s. 775.082 or s. 775.083.

309 Section 11. Subsections (3) and (4) of section 569.19,
310 Florida Statutes, are amended to read:

311 569.19 Annual report.—The division shall report annually
312 with written findings to the Legislature and the Governor by
313 December 31, on the progress of implementing the enforcement
314 provisions of this chapter. This must include, but is not
315 limited to:

316 (3) The number of violations for selling tobacco products
317 to persons under age 21 ~~18~~, and the results of administrative
318 hearings on the above and related issues.

319 (4) The number of persons under 21 years of age ~~18~~ cited

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320 for violations of s. 569.11 and sanctions imposed as a result of
321 citation.

322 Section 12. This act shall take effect July 1, 2017.