A bill to be entitled
An act relating to tobacco products; providing a short
title; amending s. 210.095, F.S.; revising shipping
documentation requirements for specified sales of
tobacco products; providing criminal and noncriminal
penalties; amending s. 322.056, F.S.; deleting
provisions requiring driver license penalties for
certain persons who commit tobacco-related offenses;
amending s. 386.212, F.S.; revising the age limit for
smoking near school property; amending s. 569.002,
F.S.; defining the term “electronic smoking device”;
redefining the term “tobacco products”; deleting the
term “any person under the age of 18”; amending s.
569.007, F.S.; prohibiting the sale of tobacco
products except under certain circumstances; providing
an exception for certain establishments; amending s.
569.0075, F.S.; prohibiting certain entities from
gifting sample tobacco products to persons under 21
years of age; amending s. 569.008, F.S.; providing
legislative intent; deleting a provision relating to
the mitigation of penalties imposed against a dealer
for certain violations; amending s. 569.101, F.S.;
providing that it is unlawful to sell, deliver,
barter, furnish, or give tobacco products to persons
under 21 years of age; revising penalties for
violations; revising the requirements for a complete
defense for persons charged with certain violations;
amending s. 569.11, F.S.; deleting provisions relating
to persons under 18 years of age possessing tobacco
products; providing that it is unlawful for persons under 21 years of age to misrepresent their age to acquire tobacco products; revising the penalties for certain persons who misrepresent their age; deleting a provision requiring a person participating in community service to be considered an employee of the state for certain purposes; conforming a provision to changes made by the act; amending ss. 569.12, 569.14, and 569.19, F.S.; conforming provisions to changes made by the act; repealing s. 877.112, F.S., relating to restrictions on the sale and delivery of nicotine products and nicotine dispensing devices; providing an effective date.

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

Section 1. This act may be cited as the “Tobacco 21 Act.”

Section 2. Subsection (5) and paragraphs (e) and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:

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

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

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Tobacco Products: Florida law prohibits shipping to individuals under 21 years of age and requires the payment of all applicable
(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another adult who resides at the individual’s address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.

2. Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

(c) Provide to the delivery service, if such service is used, evidence of full compliance with subsection (7).

Any person who violates paragraph (a) commits a noncriminal violation and must serve at least 20 hours of community service. Any person who violates paragraph (a) a second or subsequent time within 1 year of the first violation commits a noncriminal violation and must serve at least 40 hours of community service.

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

(8)
(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult commits a misdemeanor of the second degree of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(g) An individual who is not an adult and who knowingly violates any provision of this section commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 322.056, Florida Statutes, is amended to read:

322.056 Mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of certain alcohol or drug, or tobacco offenses; prohibition.—

(1) Notwithstanding the provisions of s. 322.055, if a person under 18 years of age is found guilty of or delinquent for a violation of s. 562.11(2), s. 562.111, or chapter 893, and:

(a) The person is eligible by reason of age for a driver license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver license or driving privilege for a period of:

1. Not less than 6 months and not more than 1 year for the first violation.

2. Two years, for a subsequent violation.

(b) The person’s driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or
revocation by an additional period of:

  1. Not less than 6 months and not more than 1 year for the first violation.

  2. Two years, for a subsequent violation.

(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege for a period of:

  1. Not less than 6 months and not more than 1 year after the date on which he or she would otherwise have become eligible, for the first violation.

  2. Two years after the date on which he or she would otherwise have become eligible, for a subsequent violation.

However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined in s. 322.271, if the person is otherwise qualified for such a license.

(2) If a person under 18 years of age is found by the court to have committed a noncriminal violation under s. 569.11 or s. 877.112(6) or (7) and that person has failed to comply with the procedures established in that section by failing to fulfill community service requirements, failing to pay the applicable fine, or failing to attend a locally available school-approved anti-tobacco program, and:

(a) The person is eligible by reason of age for a driver license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her
driver license or driving privilege as follows:

1. For the first violation, for 30 days.
2. For the second violation within 12 weeks of the first violation, for 45 days.

(b) The person’s driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period as follows:

1. For the first violation, for 30 days.
2. For the second violation within 12 weeks of the first violation, for 45 days.

(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege as follows:

1. For the first violation, for 30 days.
2. For the second violation within 12 weeks of the first violation, for 45 days.

Any second violation of s. 569.11 or s. 877.112(6) or (7) not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.

(3) If a person under 18 years of age is found by the court to have committed a third violation of s. 569.11 or s. 877.112(6) or (7) within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to suspend or withhold issuance of his or her driver license or driving privilege for 60 consecutive days. Any third
violation of s. 569.11 or s. 877.112(6) or (7) not within the
12-week period after the first violation will be treated as a
first violation and in the same manner as provided in subsection
(2).

(2) A penalty imposed under this section shall be in
addition to any other penalty imposed by law.

(5) The suspension or revocation of a person's driver
license imposed pursuant to subsection (2) or subsection (3),
shall not result in or be cause for an increase of the convicted
person's, or his or her parent's or legal guardian's, automobile
insurance rate or premium or result in points assessed against
the person's driving record.

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

386.212 Smoking prohibited near school property; penalty.—
(1) It is unlawful for any person under 21 years of age
to smoke tobacco in, on, or within 1,000 feet of the real
property comprising a public or private elementary, middle, or
secondary school between the hours of 6 a.m. and midnight. This
section does not apply to any person occupying a moving vehicle
or within a private residence.

Section 5. Present subsections (3), (4), and (5) of section
569.002, Florida Statutes, are redesignated as subsections (4),
(5), and (6), respectively, present subsections (6) and (7) of
that section are amended, and a new subsection (3) is added to
that section, to read:

569.002 Definitions.—As used in this chapter, the term:
(3) "Electronic smoking device" means any device that can
be used to deliver aerosolized or vaporized nicotine to the
person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term includes any component, part, or accessory of such a device, sold separately or with the device, and includes any substance intended to be aerosolized or vaporized during the use of the device. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(7) "Tobacco products" means any product that is made from or derived from tobacco or that contains nicotine and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The term includes electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and liquids used in electronic smoking devices, whether or not they contain nicotine. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

(7) "Any person under the age of 18" does not include any person under the age of 18 who:

(a) Has had his or her disability of nonage removed under
(b) Is in the military reserve or on active duty in the Armed Forces of the United States;

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

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

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

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under 21 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when the tobacco products are sold from behind a counter and are required to be retrieved and hand delivered by an employee to the consumer. Sales from a vending machine are prohibited. This section does not apply to an establishment that prohibits persons under 21 years of age on the licensed premises:

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

(b) Sales from a vending machine are prohibited under the provisions of paragraph (1)(a) and are only permissible from a machine that is equipped with an operational lockout device which 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 tobacco 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 tobacco product is dispensed at a time.

(2) The provisions of Subsection (1) shall not apply to an establishment that prohibits persons under 18 years of age on the licensed premises.

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

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

Section 8. Subsections (1), (2), and (3) of section 569.008, Florida Statutes, are amended to read:

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

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

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures designed to ensure that the dealer’s employees comply with the provisions of this chapter. The dealer must provide a training program for the dealer’s employees which addresses the use and
sale of tobacco products and which includes at least the following topics:
   (a) Laws covering the sale of tobacco products.
   (b) Methods of recognizing and handling customers under 21 years of age.
   (c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 years of age.
   (d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee’s illegal sale of a tobacco product to a person under 18 years of age if the following conditions are met:
   (a) The dealer is qualified as a responsible dealer under this section.
   (b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.
   (c) The dealer had no knowledge of that employee’s violation at the time of the violation and did not direct, approve, or participate in the violation.
   (d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Section 9. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 years of age; criminal penalties; defense.—
(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any tobacco product.

(2) Any person who violates subsection (1) commits a noncriminal violation punishable by a fine of no more than $500 misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year of the first violation, commits a noncriminal violation punishable by a fine of no more than $1,000 misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

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

Section 10. Section 569.11, Florida Statutes, is amended to read:

569.11 Possession, Misrepresenting age or military service
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(1) It is unlawful for any person under 18 years of age to knowingly possess any tobacco product. Any person under 18 years of age who violates the provisions of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

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

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

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

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

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

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

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

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person’s driver license or driving privilege, as provided in s. 322.056.
years of age who violates a provision of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

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

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

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

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

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

(2)(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with
the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (3).

(3) Any person who violates subsection (1) commits a noncriminal violation and must serve at least 20 hours of community service. Any person who violates subsection (1) a second or subsequent time within 1 year of the first violation commits a noncriminal violation and must serve at least 40 hours of community service (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

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

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

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

Section 11. Paragraph (b) of subsection (2) and subsection (3) of section 569.12, Florida Statutes, are amended to read:

569.12 Jurisdiction; tobacco product enforcement officers or agents; enforcement.—

(2)

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

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 21 when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11.

Section 12. Section 569.14, Florida Statutes, is amended to read:

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

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following:

THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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

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

(3)-(4) Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer’s agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to be sold or purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BE SOLD OR BUY TOBACCO PRODUCTS.

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

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

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

Section 13. Subsection (4) of section 569.19, Florida Statutes, is amended to read:

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

(4) The number of persons under age 21 cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 14. Section 877.112, Florida Statutes, is repealed.

Section 15. This act shall take effect October 1, 2018.