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1 A bill to be entitled
2 An act relating to tobacco and nicotine products;
3 providing a short title; creating s. 163.085, F.S.;
4 defining terms; preempting the establishment of the
5 minimum age for the sale or delivery of tobacco
6 products, nicotine products, or nicotine dispensing
7 devices to the state; providing exceptions; amending
8 s. 210.095, F.S.; deleting the definition of the term
9 "adult"; defining the term "the minimum age for
10 purchase"; conforming provisions to changes made by
11 the act; amending s. 386.212, F.S.; revising the age
12 under which it is unlawful to smoke in, on, or near
13 school property; amending s. 569.002, F.S.; defining
14 the terms "the minimum age for purchase" and "any
15 person under the minimum age for purchase"; replacing
16 the term "any person under the age of 18" with "any
17 person under the minimum age for purchase"; amending
18 s. 569.007, F.S.; providing that it is unlawful to
19 sell or deliver tobacco products to persons under the
20 minimum age for purchase; providing an exception;
21 amending s. 569.0075, F.S.; revising the age under
22 which the gift of tobacco products to a person by
23 certain entities is prohibited; amending s. 569.008,
24 F.S.; revising legislative intent to reflect that the
25 Legislature intends to prevent the sale of tobacco
26 products to persons under a specified age; conforming
27 provisions to changes made by the act; amending s.
28 569.101, F.S.; revising the age limitation that
29 applies to the sale, delivery, bartering, furnishing,

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30 or giving of tobacco products; conforming provisions
31 to changes made by the act; amending s. 569.11, F.S.;
32 revising the age limitation that applies to possessing
33 tobacco products; revising the age limitation that
34 applies to unlawful misrepresentation of age or
35 military service for certain purposes; conforming
36 provisions to changes made by the act; amending ss.
37 569.12, 569.14, and 569.19, F.S.; conforming
38 provisions to changes made by the act; amending s.
39 877.112, F.S.; defining the term "any person under 21
40 years of age"; revising the age limitations relating
41 to nicotine products and nicotine dispensing devices;
42 conforming provisions to changes made by the act;
43 providing an effective date.

44
45 Be It Enacted by the Legislature of the State of Florida:

46
47 Section 1. This act may be cited as the "Tobacco 21 Act."

48 Section 2. Section 163.085, Florida Statutes, is created to
49 read:

50 163.085 Preemption of the establishment of the minimum age
51 for tobacco products, nicotine products, or nicotine dispensing
52 devices, and the regulation of marketing of such products.-

53 (1) DEFINITIONS.-As used in this section, the term:

54 (a) "Local government" means a county, municipality, or
55 special district.

56 (b) "Minimum age" means the lawful age to purchase or
57 knowingly possess tobacco products, nicotine products, or
58 nicotine dispensing devices.

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59 (c) "Nicotine dispensing device" has the same meaning as in
60 s. 877.112.

61 (d) "Nicotine product" has the same meaning as in s.
62 877.112.

63 (e) "Retail licensure" means any certification,
64 registration, or license that is required for a person, firm,
65 association, or corporation to deal, at retail, with or
66 regarding any tobacco products.

67 (f) "Tobacco products" has the same meaning as in s.
68 569.002.

69 (2) PREEMPTION.—The establishment of the minimum age for
70 the sale and delivery of tobacco products, nicotine products, or
71 nicotine dispensing devices is preempted to the state. Nothing
72 in this section shall be construed to affect a local
73 government's ability to require retail licensure for the sale of
74 tobacco products.

75 Section 3. Present paragraphs (b) through (f) of subsection
76 (1) of section 210.095, Florida Statutes, are redesignated as
77 paragraphs (a) through (e), respectively, a new paragraph (f) is
78 added to that section, and present paragraph (a) of subsection
79 (1), paragraph (c) of subsection (2), paragraph (a) of
80 subsection (3), paragraph (a) of subsection (4), subsection (5),
81 and paragraphs (a), (b), (e), and (g) of subsection (8) of that
82 section are amended, to read:

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

85 (1) For purposes of this section, the term:

86 ~~(a) "Adult" means an individual who is at least of the~~
87 ~~legal minimum purchase age for tobacco products.~~

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88 (f) "The minimum age for purchase" means 21 years of age.

89 (2)

90 (c) A person may not make a delivery sale of tobacco
91 products to any individual who is not the minimum age for
92 purchase ~~an adult~~.

93 (3) A person may not mail, ship, or otherwise deliver
94 tobacco products in connection with an order for a delivery sale
95 unless, before the first delivery to the consumer, the person
96 accepting the order for the delivery sale:

97 (a) Obtains from the individual submitting the order a
98 certification that includes:

99 1. Reliable confirmation that the individual is the minimum
100 age for purchase ~~an adult~~; and

101 2. A statement signed by the individual in writing and
102 under penalty of perjury which:

103 a. Certifies the address and date of birth of the
104 individual; and

105 b. Confirms that the individual wants to receive delivery
106 sales from a tobacco company and understands that, under the
107 laws of this state, the following actions are illegal:

108 (I) Signing another individual's name to the certification;

109 (II) Selling tobacco products to individuals under the
110 legal minimum purchase age; and

111 (III) Purchasing tobacco products, if the person making the
112 purchase is under the legal minimum purchase age.

113

114 In addition to the requirements of this subsection, a person
115 accepting an order for a delivery sale may request that a
116 consumer provide an electronic mail address.

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117 (4) The notice described in paragraph (3)(c) must include
118 prominent and clearly legible statements that sales of tobacco
119 products are:

120 (a) Illegal if made to individuals who are not the minimum
121 age for purchase ~~adults~~.

122
123 The notice must include an explanation of how each tax has been,
124 or is to be, paid with respect to the delivery sale.

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

128 (a) Include as part of the shipping documents, in a clear
129 and conspicuous manner, the following statement: "Tobacco
130 Products: Florida law prohibits shipping to individuals under 21
131 ~~18~~ years of age and requires the payment of all applicable
132 taxes."

133 (b) Use a method of mailing, shipping, or delivery which
134 obligates the delivery service to require:

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

142 2. Proof that the individual is either the addressee or the
143 individual who is the minimum age for purchase ~~adult~~ designated
144 by the addressee, in the form of a valid, government-issued
145 identification card bearing a photograph of the individual who

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146 signs to accept delivery of the shipping container.

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

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

156 (8) (a) Except as otherwise provided in this section, a
157 violation of this section by a person other than an individual
158 who is not the minimum age for purchase ~~an adult~~ is a
159 misdemeanor of the first degree, punishable as provided in s.
160 775.082 or s. 775.083, and:

161 1. For a first violation of this section, the person shall
162 be fined \$1,000 or five times the retail value of the tobacco
163 products involved in the violation, whichever is greater.

164 2. For a second or subsequent violation of this section,
165 the person shall be fined \$5,000 or five times the retail value
166 of the tobacco products involved in the violation, whichever is
167 greater.

168 (b) A person who is the minimum age for purchase ~~an adult~~
169 and knowingly submits a false certification under subsection (3)
170 commits a misdemeanor of the first degree, punishable as
171 provided in s. 775.082 or s. 775.083. For each offense, the
172 person shall be fined \$10,000 or five times the retail value of
173 the tobacco products involved in the violation, whichever is
174 greater.

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175 (e) A person who, in connection with a delivery sale,
176 delivers tobacco products on behalf of a delivery service to an
177 individual who is not the minimum age for purchase ~~an adult~~
178 commits a misdemeanor of the third degree, punishable as
179 provided in s. 775.082 or s. 775.083.

180 (g) An individual who is not the minimum age for purchase
181 ~~an adult~~ and who knowingly violates any provision of this
182 section commits a misdemeanor of the third degree, punishable as
183 provided in s. 775.082 or s. 775.083.

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

186 386.212 Smoking prohibited near school property; penalty.—

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

193 Section 5. Present subsections (3) through (7) of section
194 569.002, Florida Statutes, are redesignated as subsections (4)
195 through (8), respectively, a new subsection (3) is added to that
196 section, and present subsection (7) is amended, to read:

197 569.002 Definitions.—As used in this chapter, the term:

198 (3) "The minimum age for purchase" means 21 years of age.

199 (8) ~~(7)~~ "Any person under the minimum age of purchase ~~18~~"
200 does not include any person under the minimum age of purchase ~~18~~
201 who:

202 ~~(a) Has had his or her disability of nonage removed under~~
203 ~~chapter 743;~~

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

206 ~~(c) Is otherwise emancipated by a court of competent~~
207 ~~jurisdiction and released from parental care and responsibility;~~
208 ~~or~~

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

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

214 569.007 Sale or delivery of tobacco products;
215 restrictions.—

216 (1) In order to prevent persons under the minimum age of
217 purchase ~~18 years of age~~ from purchasing or receiving tobacco
218 products, the sale or delivery of tobacco products is
219 prohibited, except:

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

222 (b) Sales from a vending machine are prohibited under the
223 provisions of paragraph (1) (a) and are only permissible from a
224 machine that is equipped with an operational lockout device
225 which is under the control of the dealer or the dealer's agent
226 or employee who directly regulates the sale of items through the
227 machine by triggering the lockout device to allow the dispensing
228 of one tobacco product. The lockout device must include a
229 mechanism to prevent the machine from functioning if the power
230 source for the lockout device fails or if the lockout device is
231 disabled, and a mechanism to ensure that only one tobacco
232 product is dispensed at a time.

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233 (2) The provisions of subsection (1) shall not apply to an
234 establishment that prohibits persons under 21 ~~18~~ years of age on
235 the licensed premises.

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

238 569.0075 Gift of sample tobacco products prohibited.—The
239 gift of sample tobacco products to any person under the minimum
240 age for purchase ~~age of 18~~ by an entity licensed or permitted
241 under the provisions of chapter 210 or this chapter, or by an
242 employee of such entity, is prohibited and is punishable as
243 provided in s. 569.101.

244 Section 8. Subsections (1), (2), and (3) of section
245 569.008, Florida Statutes, are amended to read:

246 569.008 Responsible retail tobacco products dealers;
247 qualifications; mitigation of disciplinary penalties; diligent
248 management and supervision; presumption.—

249 (1) The Legislature intends to prevent the sale of tobacco
250 products to persons under the minimum age for purchase ~~18 years~~
251 ~~of age~~ and to encourage retail tobacco products dealers to
252 comply with responsible practices in accordance with this
253 section.

254 (2) To qualify as a responsible retail tobacco products
255 dealer, the dealer must establish and implement procedures
256 designed to ensure that the dealer's employees comply with the
257 provisions of this chapter. The dealer must provide a training
258 program for the dealer's employees which addresses the use and
259 sale of tobacco products and which includes at least the
260 following topics:

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

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262 (b) Methods of recognizing and handling customers under the
263 minimum age for purchase ~~18 years of age~~.

264 (c) Procedures for proper examination of identification
265 cards in order to verify that customers are not under the
266 minimum age for purchase ~~18 years of age~~.

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

269 (3) In determining penalties under s. 569.006, the division
270 may mitigate penalties imposed against a dealer because of an
271 employee's illegal sale of a tobacco product to a person under
272 the minimum age for purchase ~~18 years of age~~ if the following
273 conditions are met:

274 (a) The dealer is qualified as a responsible dealer under
275 this section.

276 (b) The dealer provided the training program required under
277 subsection (2) to that employee before the illegal sale
278 occurred.

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

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

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

286 569.101 Selling, delivering, bartering, furnishing, or
287 giving tobacco products to persons under the minimum age for
288 purchase ~~18 years of age~~; criminal penalties; defense.—

289 (1) It is unlawful to sell, deliver, barter, furnish, or
290 give, directly or indirectly, to any person who is under the

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291 minimum age for purchase ~~18 years of age~~, any tobacco product.

292 (2) Any person who violates subsection (1) commits a
293 misdemeanor of the second degree, punishable as provided in s.
294 775.082 or s. 775.083. However, any person who violates
295 subsection (1) for a second or subsequent time within 1 year of
296 the first violation, commits a misdemeanor of the first degree,
297 punishable as provided in s. 775.082 or s. 775.083.

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

301 (a) The buyer or recipient falsely evidenced that she or he
302 was the minimum age for purchase ~~18 years of age~~ or older;

303 (b) The appearance of the buyer or recipient was such that
304 a prudent person would believe the buyer or recipient to be the
305 minimum age for purchase ~~18 years of age~~ or older; and

306 (c) Such person carefully checked a driver license or an
307 identification card issued by this state or another state of the
308 United States, a passport, or a United States armed services
309 identification card presented by the buyer or recipient and
310 acted in good faith and in reliance upon the representation and
311 appearance of the buyer or recipient in the belief that the
312 buyer or recipient was the minimum age for purchase ~~18 years of~~
313 ~~age~~ or older.

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

316 569.11 Possession, misrepresenting age or military service
317 to purchase, and purchase of tobacco products by persons under
318 the minimum age for purchase ~~18 years of age~~ prohibited;
319 penalties; jurisdiction; disposition of fines.-

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320 (1) It is unlawful for any person under the minimum age for
321 purchase ~~18 years of age~~ to knowingly possess any tobacco
322 product. Any person under the minimum age for purchase ~~18 years~~
323 ~~of age~~ who violates the provisions of this subsection commits a
324 noncriminal violation as provided in s. 775.08(3), punishable
325 by:

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

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

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

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

341 (2) It is unlawful for any person under the minimum age for
342 purchase ~~18 years of age~~ to misrepresent his or her age or
343 military service for the purpose of inducing a dealer or an
344 agent or employee of the dealer to sell, give, barter, furnish,
345 or deliver any tobacco product, or to purchase, or attempt to
346 purchase, any tobacco product from a person or a vending
347 machine. Any person under the minimum age for purchase ~~18 years~~
348 ~~of age~~ who violates a provision of this subsection commits a

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349 noncriminal violation as provided in s. 775.08(3), punishable
350 by:

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

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

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

362

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

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

376 (4) A person charged with a noncriminal violation under
377 this section must appear before the county court or comply with

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378 the requirement for paying the fine. The court, after a hearing,
379 shall make a determination as to whether the noncriminal
380 violation was committed. If the court finds the violation was
381 committed, it shall impose an appropriate penalty as specified
382 in subsection (1) or subsection (2). A person who participates
383 in community service shall be considered an employee of the
384 state for the purpose of chapter 440, for the duration of such
385 service.

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

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

403 (6) Eighty percent of all civil penalties received by a
404 county court pursuant to this section shall be remitted by the
405 clerk of the court to the Department of Revenue for transfer to
406 the Department of Education to provide for teacher training and

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407 for research and evaluation to reduce and prevent the use of
408 tobacco products by children. The remaining 20 percent of civil
409 penalties received by a county court pursuant to this section
410 shall remain with the clerk of the county court to cover
411 administrative costs.

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

414 569.12 Jurisdiction; tobacco product enforcement officers
415 or agents; enforcement.—

416 (2)

417 (b) A tobacco product enforcement officer is authorized to
418 issue a citation to a person under the minimum age for purchase
419 ~~of 18~~ when, based upon personal investigation, the officer has
420 reasonable cause to believe that the person has committed a
421 civil infraction in violation of s. 386.212 or s. 569.11.

422 (3) A correctional probation officer as defined in s.
423 943.10(3) is authorized to issue a citation to a person under
424 the minimum age for purchase ~~of 18~~ when, based upon personal
425 investigation, the officer has reasonable cause to believe that
426 the person has committed a civil infraction in violation of s.
427 569.11.

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

430 569.14 Posting of a sign stating that the sale of tobacco
431 products to persons under the minimum age for purchase ~~18 years~~
432 ~~of age~~ is unlawful; enforcement; penalty.—

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

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THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ 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 21 ~~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.

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

(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 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)

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465 YOU CANNOT BE SOLD ~~BUY~~ TOBACCO PRODUCTS.

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

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

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

478 Section 13. Subsections (3) and (4) of section 569.19,
479 Florida Statutes, are amended to read:

480 569.19 Annual report.—The division shall report annually
481 with written findings to the Legislature and the Governor by
482 December 31, on the progress of implementing the enforcement
483 provisions of this chapter. This must include, but is not
484 limited to:

485 (3) The number of violations for selling tobacco products
486 to persons under the minimum age for purchase ~~18~~, and the
487 results of administrative hearings on the above and related
488 issues.

489 (4) The number of persons under the minimum age for
490 purchase ~~18~~ cited for violations of s. 569.11 and sanctions
491 imposed as a result of citation.

492 Section 14. Section 877.112, Florida Statutes, is amended
493 to read:

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494 877.112 Nicotine products and nicotine dispensing devices;
495 prohibitions for persons under 21 years of age ~~minors~~;
496 penalties; civil fines; signage requirements; preemption.—

497 (1) DEFINITIONS.—As used in this section, the term:

498 (a) "Any person under 21 years of age" does not include any
499 person under the age of 21 who:

500 1. Is in the military reserve or on active duty in the
501 Armed Forces of the United States; or

502 2. Is acting in his or her scope of lawful employment with
503 an entity that sells, manufactures, or distributes nicotine
504 products or nicotine dispensing devices.

505 (b) ~~(a)~~ "Nicotine dispensing device" means any product that
506 employs an electronic, chemical, or mechanical means to produce
507 vapor from a nicotine product, including, but not limited to, an
508 electronic cigarette, electronic cigar, electronic cigarillo,
509 electronic pipe, or other similar device or product, any
510 replacement cartridge for such device, and any other container
511 of nicotine in a solution or other form intended to be used with
512 or within an electronic cigarette, electronic cigar, electronic
513 cigarillo, electronic pipe, or other similar device or product.

514 (c) ~~(b)~~ "Nicotine product" means any product that contains
515 nicotine, including liquid nicotine, that is intended for human
516 consumption, whether inhaled, chewed, absorbed, dissolved, or
517 ingested by any means, but does not include a:

518 1. Tobacco product, as defined in s. 569.002;

519 2. Product regulated as a drug or device by the United
520 States Food and Drug Administration under Chapter V of the
521 federal Food, Drug, and Cosmetic Act; or

522 3. Product that contains incidental nicotine.

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523 (d)~~(e)~~ "Self-service merchandising" means the open display
524 of nicotine products or nicotine dispensing devices, whether
525 packaged or otherwise, for direct retail customer access and
526 handling before purchase without the intervention or assistance
527 of the retailer or the retailer's owner, employee, or agent. An
528 open display of such products and devices includes the use of an
529 open display unit.

530 (2) PROHIBITIONS ON SALE TO PERSONS UNDER 21 YEARS OF AGE
531 ~~MINORS~~.—It is unlawful to sell, deliver, barter, furnish, or
532 give, directly or indirectly, to any person who is under 21 ~~18~~
533 years of age, any nicotine product or a nicotine dispensing
534 device.

535 (3) PROHIBITIONS ON GIFTING SAMPLES TO PERSONS UNDER 21
536 YEARS OF AGE ~~MINORS~~.—The gift of a sample nicotine product or
537 nicotine dispensing device to any person under the age of 21 ~~18~~
538 by a retailer of nicotine products or nicotine dispensing
539 devices, or by an employee of such retailer, is prohibited.

540 (4) PENALTIES.—Any person who violates subsection (2) or
541 subsection (3) commits a misdemeanor of the second degree,
542 punishable as provided in s. 775.082 or s. 775.083. However, any
543 person who violates subsection (2) or subsection (3) for a
544 second or subsequent time within 1 year of the first violation
545 commits a misdemeanor of the first degree, punishable as
546 provided in s. 775.082 or s. 775.083.

547 (5) AFFIRMATIVE DEFENSES.—A person charged with a violation
548 of subsection (2) or subsection (3) has a complete defense if,
549 at the time the nicotine product or nicotine dispensing device
550 was sold, delivered, bartered, furnished, or given:

551 (a) The buyer or recipient falsely evidenced that she or he

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552 was 21 ~~18~~ years of age or older;

553 (b) The appearance of the buyer or recipient was such that
554 a prudent person would believe the buyer or recipient to be 21
555 ~~18~~ years of age or older; and

556 (c) Such person carefully checked a driver license or an
557 identification card issued by this state or another state of the
558 United States, a passport, or a United States Armed Services
559 identification card presented by the buyer or recipient and
560 acted in good faith and in reliance upon the representation and
561 appearance of the buyer or recipient in the belief that the
562 buyer or recipient was 21 ~~18~~ years of age or older.

563 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR
564 NICOTINE DISPENSING DEVICES BY PERSONS UNDER 21 YEARS OF AGE
565 ~~MINORS~~.—It is unlawful for any person under 21 ~~18~~ years of age
566 to knowingly possess any nicotine product or a nicotine
567 dispensing device. Any person under 21 ~~18~~ years of age who
568 violates this subsection commits a noncriminal violation as
569 defined in s. 775.08(3), punishable by:

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

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

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

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581
582 Any second or subsequent violation not within the 12-week time
583 period after the first violation is punishable as provided for a
584 first violation.

585 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
586 any person under 21 ~~18~~ years of age to misrepresent his or her
587 age or military service for the purpose of inducing a retailer
588 of nicotine products or nicotine dispensing devices or an agent
589 or employee of such retailer to sell, give, barter, furnish, or
590 deliver any nicotine product or nicotine dispensing device, or
591 to purchase, or attempt to purchase, any nicotine product or
592 nicotine dispensing device from a person or a vending machine.
593 Any person under 21 ~~18~~ years of age who violates this subsection
594 commits a noncriminal violation as defined in s. 775.08(3),
595 punishable by:

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

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

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

607
608 Any second or subsequent violation not within the 12-week time
609 period after the first violation is punishable as provided for a

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610 first violation.

611 (8) PENALTIES FOR PERSONS UNDER 21 YEARS OF AGE ~~MINORS~~.—

612 (a) A person under 21 ~~18~~ years of age cited for committing
613 a noncriminal violation under this section must sign and accept
614 a civil citation indicating a promise to appear before the
615 county court or comply with the requirement for paying the fine
616 and must attend a school-approved anti-tobacco and nicotine
617 program, if locally available. If a fine is assessed for a
618 violation of this section, the fine must be paid within 30 days
619 after the date of the citation or, if a court appearance is
620 mandatory, within 30 days after the date of the hearing.

621 (b) A person charged with a noncriminal violation under
622 this section must appear before the county court or comply with
623 the requirement for paying the fine. The court, after a hearing,
624 shall make a determination as to whether the noncriminal
625 violation was committed. If the court finds the violation was
626 committed, it shall impose an appropriate penalty as specified
627 in subsection (6) or subsection (7). A person who participates
628 in community service shall be considered an employee of the
629 state for the purpose of chapter 440, for the duration of such
630 service.

631 (c) If a person under 21 ~~18~~ years of age is found by the
632 court to have committed a noncriminal violation under this
633 section and that person has failed to complete community
634 service, pay the fine as required by paragraph (6) (a) or
635 paragraph (7) (a), or attend a school-approved anti-tobacco and
636 nicotine program, if locally available, the court must direct
637 the Department of Highway Safety and Motor Vehicles to withhold
638 issuance of or suspend the driver license or driving privilege

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639 of that person for 30 consecutive days.

640 (d) If a person under 21 ~~18~~ years of age is found by the
641 court to have committed a noncriminal violation under this
642 section and that person has failed to pay the applicable fine as
643 required by paragraph (6) (b) or paragraph (7) (b), the court must
644 direct the Department of Highway Safety and Motor Vehicles to
645 withhold issuance of or suspend the driver license or driving
646 privilege of that person for 45 consecutive days.

647 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
648 civil penalties received by a county court pursuant to
649 subsections (6) and (7) shall be remitted by the clerk of the
650 court to the Department of Revenue for transfer to the
651 Department of Education to provide for teacher training and for
652 research and evaluation to reduce and prevent the use of tobacco
653 products, nicotine products, or nicotine dispensing devices by
654 children. The remaining 20 percent of civil penalties received
655 by a county court pursuant to this section shall remain with the
656 clerk of the county court to cover administrative costs.

657 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
658 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

659 (a) Any retailer that sells nicotine products or nicotine
660 dispensing devices shall post a clear and conspicuous sign in
661 each place of business where such products are sold which
662 substantially states the following:

663

664 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING
665 DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST
666 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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668 (b) A retailer that sells nicotine products or nicotine
669 dispensing devices shall provide at the checkout counter in a
670 location clearly visible to the retailer or the retailer's agent
671 or employee instructional material in a calendar format or
672 similar format to assist in determining whether a person is of
673 legal age to purchase nicotine products or nicotine dispensing
674 devices. This point of sale material must contain substantially
675 the following language:

676

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY NICOTINE PRODUCTS OR
NICOTINE DISPENSING DEVICES.

681

682 In lieu of a calendar a retailer may use card readers, scanners,
683 or other electronic or automated systems that can verify whether
684 a person is of legal age to purchase nicotine products or
685 nicotine dispensing devices.

686 (11) SELF-SERVICE MERCHANDISING PROHIBITED.—

687 (a) A retailer that sells nicotine products or nicotine
688 dispensing devices may not sell, permit to be sold, offer for
689 sale, or display for sale such products or devices by means of
690 self-service merchandising.

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

695 (c) Paragraphs (a) and (b) do not apply to an establishment
696 that prohibits persons under 21 ~~18~~ years of age on the premises.

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697 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS
698 OR NICOTINE DISPENSING DEVICES.—

699 (a) In order to prevent persons under 21 ~~18~~ years of age
700 from purchasing or receiving nicotine products or nicotine
701 dispensing devices, the sale or delivery of such products or
702 devices is prohibited, except:

703 1. When under the direct control, or line of sight where
704 effective control may be reasonably maintained, of the retailer
705 of nicotine products or nicotine dispensing devices or such
706 retailer's agent or employee; or

707 2. Sales from a vending machine are prohibited under
708 subparagraph 1. and are only permissible from a machine that is
709 equipped with an operational lockout device which is under the
710 control of the retailer of nicotine products or nicotine
711 dispensing devices or such retailer's agent or employee who
712 directly regulates the sale of items through the machine by
713 triggering the lockout device to allow the dispensing of one
714 nicotine product or nicotine dispensing device. The lockout
715 device must include a mechanism to prevent the machine from
716 functioning, if the power source for the lockout device fails or
717 if the lockout device is disabled, and a mechanism to ensure
718 that only one nicotine product or nicotine dispensing device is
719 dispensed at a time.

720 (b) Paragraph (a) does not apply to an establishment that
721 prohibits persons under 21 ~~18~~ years of age on the premises.

722 (c) A retailer of nicotine products or nicotine dispensing
723 devices or such retailer's agent or employee may require proof
724 of age of a purchaser of such products or devices before selling
725 the product or device to that person.

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Section 15. This act shall take effect October 1, 2019.