

STORAGE NAME: h0555.rs

DATE: January 27, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATED SERVICES
ANALYSIS**

BILL #: HB 555

RELATING TO: Tobacco; Accessible to Minors

SPONSOR(S): Representative Sanderson and Others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES
 - (2) CRIME AND PUNISHMENT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill requires retail establishments which sell tobacco products to keep all tobacco products either behind the sales counter or in another area of the store which is inaccessible to minor customers. The bill establishes a second degree misdemeanor for anyone who violates this requirement.

This legislation will have no immediate impact on state revenue.

This act takes effect July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Tobacco Regulation

Chapter 569, Florida Statutes, establishes a retail dealer license for establishments selling tobacco. Department of Business and Professional Regulation records indicate that there were 29,230 retail tobacco dealer licenses issued as of November 24, 1999. Enacted in 1992 [Chapter 92-285, Laws of Florida] and substantially amended in 1997 [Chapter 97-162, Laws of Florida], this statute provides legislative intent and retailer responsibilities to help prevent the sale of tobacco products to persons under the age of 18.

Section 569.101, Florida Statutes, specifies that any person who unlawfully sells tobacco products to a person under the age of 18 commits a second degree misdemeanor. A second violation within a one year period of the first violation is a first degree misdemeanor. Further, s. 569.008, Florida Statutes, establishes a "due diligence" standard for tobacco retailers and specifies that three violations of s. 569.101, Florida Statutes, in a six month period constitutes a lack of due diligence by the retailer in the management and supervision of the licensed premises and in the supervision and training of the retailer's employees and subjects the license to administrative sanctions, including an administrative fine, suspension and/or revocation.

This chapter also makes it unlawful for a person under the age of 18 to purchase, possess, or misrepresent the person's age or military status in order to acquire any tobacco product and established a civil citation process for violators.

In its continued effort to make tobacco products less accessible to minors, the 1997 Legislature required tobacco products, except for cigars and pipe tobacco, to be "under the direct control or line of sight" of the retailer [s. 569.007, Florida Statutes]. Likewise, cigarette dispensing machines were required to be in the line of sight of the retailer or to be equipped with a lock-out device which is controlled by the retailer and which will only allow the dispensing of one pack of cigarettes at a time.

Other Initiatives to Combat Youth Tobacco Use

The Florida Department of Health [DOH] reports that approximately 80% of smokers started smoking before the age of 18. The DOH has developed a strategic plan addressing the

prevention of tobacco use by Florida's youth. This multi-faceted plan includes the involvement of other state agencies including the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, tobacco-related programs within the DOH, the Tobacco Pilot Program, tobacco-free community partnerships, voluntary health agencies, other statewide public and private organizations and grassroots organizations.

The Florida Department of Health and the federal Centers for Disease Control and Prevention [CDC] Office on Smoking and Health jointly developed the Florida Youth Tobacco Survey [FYTS]. The FYTS tracks tobacco use, attitudes, and related behaviors among Florida's public school-enrolled youth.

According to latest FYTS conducted by the Department of Health, cigarette and other tobacco use by middle and high school students decreased significantly from 1998 to 1999 and again from 1999 to 2000. The percent of high school students who smoked cigarettes on one or more occasions during the 30 day period preceding the survey decreased from 27.4% in the 1998 survey to 20.9% in the 2000 survey, a 24% decline. The percent of middle school students who smoked cigarettes on one or more days during the 30 days preceding the survey decreased from 18.5% in 1998 to 8.6% in 2000, a 54% decline.

Similar reductions were demonstrated in cigar and smokeless tobacco use. Since 1998, cigar use declined by 46% among middle school students and by 21% among high school students. Nevertheless, approximately 7.6% of middle school students and 16.3% of high school students smoked a cigar on one or more occasions during the 30 days preceding the survey. Approximately 3.2% of middle school students reported using smokeless tobacco [chewing tobacco, snuff or dip], down from 6.9% in 1998 and 5.4% of high school students reported using smokeless tobacco, down from 6.7% in 1998. These results show that smokeless tobacco use also declined by 54% among middle school students and by 19% among high school students since 1998 when the Tobacco Pilot Program activities were first implemented.

A complete analysis of data from the 2000 FYTS is unavailable at this time, however, a comparison of 1998 and 1999 survey data indicated that theft as a source of cigarettes remained essentially stable. About 14% of middle school students and 6% of high school students reported that they usually get their cigarettes by stealing them — either from a retailer or from someone they know, such as a parent.

National estimates provided by the American Cancer Society indicate that nearly 3,000 young people become regular smokers each day. The average teen smoker starts smoking at age 13 and becomes a daily smoker by age 14. The Center for Disease Control reports that of the 3,000 youth that begin smoking each day, an estimated 1,000 of them will eventually die of a smoking-related disease.

C. EFFECT OF PROPOSED CHANGES:

This legislation requires retail establishments selling tobacco products to keep all such products, including cigars and pipe tobacco, either behind the sales counter or in another area of the establishment which is inaccessible to customers who are minors.

The bill establishes a second degree misdemeanor for violations of this provision.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Requires the owner or manager of a retail establishment which sells tobacco products to keep all such products either behind the sales counter or in another area of the establishment which is inaccessible to minor customers. For purposes of this requirement, tobacco products include those defined in section 210.25, F.S., cigarettes as defined in section 210.01, as well as cigars, pipe tobacco and pipes suitable for smoking.

Provides a second degree misdemeanor for violations.

Section 2. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Preliminary indications from the Department of Business and Professional Regulation show an insignificant impact on agency operations or revenues.

2. Expenditures:

Preliminary indications from the Department of Business and Professional Regulation show an insignificant impact on agency operations or expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to representatives of several retail organizations, passage of this legislation may result in significant expenditures of funds for remodeling of retail establishments whose present physical structure cannot accommodate this requirement.

Placement of all tobacco products behind the counter should virtually eliminate theft of those products by customers in the retail establishment.

Additionally, some manufacturers and distributors of low-end tobacco products expressed a concern that passage of this legislation would result in further limiting the shelf space allotted to tobacco products in many retail locations. A reduction in shelf space, they contend, may result in retailers offering for sale to the public only those products which already claim the major market share for that type product.

D. FISCAL COMMENTS:

It may be argued that any effort which curtails tobacco use by Florida's youth will ultimately reduce many associated health care expenditures and, therefore, have a long-term positive impact on state revenue expenditures.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

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Janet Clark Morris

Paul Liepshutz

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