

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 132  
SPONSOR: Regulated Industries Committee & Senator Laurent  
SUBJECT: Tobacco Products/Minors  
DATE: January 30, 2002 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill prohibits display of any single package of cigarettes or smokeless tobacco in an open display that is accessible to the public without intervention of an employee. This prohibition does not apply to a package store, to a retail store that derives at least 90 percent of its revenue from tobacco and tobacco-related products, or to a store in which minors are not permitted.

Multiunit packages of cigarettes or smokeless tobacco may be sold through open displays only if the display is within the line of sight of the sales clerk.

The bill creates an as yet un-numbered section of the Florida Statutes.

## II. Present Situation:

Section 569.101, F.S., makes it a second-degree misdemeanor for any person to sell or give, directly or indirectly, any tobacco product to a minor. A person charged with a violation has a complete defense if, at the time the tobacco product was sold or given: the buyer or recipient falsely evidenced that she or he was 18 years of age or older; the appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and such person carefully checked a driver's license or an identification card issued 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 18 years of age or older.

Section 569.11, F.S., makes it a non-criminal violation for a minor to knowingly possess any tobacco product. The section also makes it a non-criminal violation for a minor to misrepresent his or her age or military service for the purpose of inducing a dealer or agent to sell or give any tobacco product to the minor. It is also a non-criminal offense for a minor to purchase or attempt

to purchase any tobacco product from a person or a vending machine. These offenses are punishable as follows: for a first violation, 16 hours of community service or, instead of community service, a \$25 fine, along with attendance at a school-approved anti-tobacco program, if locally available; for a second violation within 12 weeks of the first violation, a \$25 fine; or 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's license or driving privilege.

Section 569.007, F.S., provides that, to prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products must be under the direct control or line of sight of the dealer or the dealer's agent or employee. Additionally, sales from a vending machine must also be from a machine that is equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one 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. These provisions do not apply to an establishment that prohibits persons less than 18 years of age on the licensed premises and do not apply to the sale or delivery of cigars and pipe tobacco.

Section 210.01(1), F.S., defines "cigarette" to mean "any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient."

Section 210.25(11), F.S., defines "tobacco products" to mean "loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but 'tobacco products' does not include cigarettes, as defined by s. 210.01(1), or cigars."

### **III. Effect of Proposed Changes:**

The bill prohibits any person or business, other than a package store, from selling, offering, or displaying any single package of cigarettes as defined in section 210.01, F.S., or smokeless tobacco in an open display that is accessible to the public without intervention of an employee. This prohibition does not apply to a retail store that derives at least 90 percent of its revenue from tobacco and tobacco-related products or to a store in which minors are not permitted.

A person or business may offer and sell multiunit packages of cigarettes as defined in section 210.01, F.S., or smokeless tobacco through open displays only if the display is within the line of sight of the sales clerk.

A violation of these provisions is a second-degree misdemeanor.

The bill takes effect July 1, 2002.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

There should be only a minimal impact on vendors.

## C. Government Sector Impact:

The Department of Business and Professional Regulation, which enforces tobacco sales laws, states that the bill will not have a fiscal impact on the Department. It currently inspects retail establishments for sales of cigarettes, chewing tobacco, smoking tobacco, and snuff to minors. The inspections will be expanded to include verification that cigars, pipe tobacco, and pipes are inaccessible to minors.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.