

1                                   A bill to be entitled  
 2           An act relating to tobacco products; providing a short  
 3           title, "Tobacco 21 Act"; amending s. 569.002, F.S.;  
 4           revising and providing definitions; amending ss.  
 5           569.007, 569.0075, 569.008, 569.101, 569.11, 569.12,  
 6           and 569.14, F.S.; revising the prohibited age for  
 7           provisions related to the sale, delivery, gift,  
 8           possession, citation for, and purchase of tobacco  
 9           products; amending s. 569.19, F.S.; revising an annual  
 10          reporting requirement for the Division of Alcoholic  
 11          Beverages and Tobacco of the Department of Business  
 12          and Professional Regulation; repealing s. 877.112,  
 13          F.S., relating to restrictions on the sale and  
 14          delivery of nicotine products and nicotine dispensing  
 15          devices; amending s. 210.095, F.S.; revising shipping  
 16          documentation requirements for specified sales of  
 17          tobacco products; amending s. 322.056, F.S.;  
 18          conforming cross-references; amending s. 386.212,  
 19          F.S.; revising the prohibited age for smoking near  
 20          school property; providing an effective date.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

- 23  
 24           Section 1.   This act may be cited as the "Tobacco 21 Act."  
 25           Section 2.   Subsection (6) of section 569.002, Florida

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26 Statutes, is amended, present subsection (7) is renumbered as  
27 subsection (8) and amended, and a new subsection (7) is added to  
28 that section, to read:

29 569.002 Definitions.—As used in this chapter, the term:

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

47 (7) "Electronic smoking device" means any device that can  
48 be used to deliver aerosolized or vaporized nicotine to the  
49 person inhaling from the device, including, but not limited to,  
50 an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

51 Electronic smoking device includes any component, part, or  
 52 accessory of such a device, whether or not sold separately, and  
 53 includes any substance intended to be aerosolized or vaporized  
 54 during the use of the device. Electronic smoking device does not  
 55 include drugs, devices, or combination products authorized for  
 56 sale by the United States Food and Drug Administration, as those  
 57 terms are defined in the Federal Food, Drug, and Cosmetic Act.

58 ~~(8)-(7)~~ "Under 21 years of age ~~Any person under the age of~~  
 59 ~~18"~~ does not include any person under the age of 21 ~~18~~ who:

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

62 ~~(b) Is in the military reserve or on active duty in the~~  
 63 ~~Armed Forces of the United States;~~

64 ~~(b)-(e)~~ Is otherwise emancipated by a court of competent  
 65 jurisdiction and released from parental care and responsibility;  
 66 or

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

70 Section 3. Subsections (1) and (2) of section 569.007,  
 71 Florida Statutes, are amended to read:

72 569.007 Sale or delivery of tobacco products;  
 73 restrictions.—

74 (1) In order to prevent persons under 21 ~~18~~ years of age  
 75 from purchasing or receiving tobacco products, the sale or

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76 | delivery of tobacco products is prohibited, except:

77 |       (a) When under the direct control or line of sight of the  
78 | dealer or the dealer's agent or employee; or

79 |       (b) Sales from a vending machine are prohibited under the  
80 | provisions of paragraph (1)(a) and are only permissible from a  
81 | machine that is equipped with an operational lockout device  
82 | which is under the control of the dealer or the dealer's agent  
83 | or employee who directly regulates the sale of items through the  
84 | machine by triggering the lockout device to allow the dispensing  
85 | of one tobacco product. The lockout device must include a  
86 | mechanism to prevent the machine from functioning if the power  
87 | source for the lockout device fails or if the lockout device is  
88 | disabled, and a mechanism to ensure that only one tobacco  
89 | product is dispensed at a time.

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

93 |       Section 4. Section 569.0075, Florida Statutes, is amended  
94 | to read:

95 |       569.0075 Gift of sample tobacco products prohibited.—The  
96 | gift of sample tobacco products to any person under 21 years of  
97 | age ~~the age of 18~~ by an entity licensed or permitted under the  
98 | provisions of chapter 210 or this chapter, or by an employee of  
99 | such entity, is prohibited and is punishable as provided in s.  
100 | 569.101.

101 Section 5. Subsections (1), (2), and (3) of section  
102 569.008, Florida Statutes, are amended to read:

103 569.008 Responsible retail tobacco products dealers;  
104 qualifications; mitigation of disciplinary penalties; diligent  
105 management and supervision; presumption.—

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

110 (2) To qualify as a responsible retail tobacco products  
111 dealer, the dealer must establish and implement procedures  
112 designed to ensure that the dealer's employees comply with the  
113 provisions of this chapter. The dealer must provide a training  
114 program for the dealer's employees which addresses the use and  
115 sale of tobacco products and which includes at least the  
116 following topics:

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

118 (b) Methods of recognizing and handling customers under 21  
119 ~~18~~ years of age.

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

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

125 (3) In determining penalties under s. 569.006, the

126 | division may mitigate penalties imposed against a dealer because  
 127 | of an employee's illegal sale of a tobacco product to a person  
 128 | under 21 ~~18~~ years of age if the following conditions are met:

129 |       (a) The dealer is qualified as a responsible dealer under  
 130 | this section.

131 |       (b) The dealer provided the training program required  
 132 | under subsection (2) to that employee before the illegal sale  
 133 | occurred.

134 |       (c) The dealer had no knowledge of that employee's  
 135 | violation at the time of the violation and did not direct,  
 136 | approve, or participate in the violation.

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

139 |       Section 6. Subsections (1) and (3) of section 569.101,  
 140 | Florida Statutes, are amended to read:

141 |       569.101 Selling, delivering, bartering, furnishing, or  
 142 | giving tobacco products to persons under 21 ~~18~~ years of age;  
 143 | criminal penalties; defense.—

144 |       (1) It is unlawful to sell, deliver, barter, furnish, or  
 145 | give, directly or indirectly, to any person who is under 21 ~~18~~  
 146 | years of age, any tobacco product.

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

150 |       (a) The buyer or recipient falsely evidenced that she or

151 he was 21 ~~18~~ years of age or older;

152 (b) The appearance of the buyer or recipient was such that  
 153 a prudent person would believe the buyer or recipient to be 21  
 154 ~~18~~ years of age or older; and

155 (c) Such person carefully checked a driver license or an  
 156 identification card issued by this state or another state of the  
 157 United States, a passport, or a United States armed services  
 158 identification card presented by the buyer or recipient and  
 159 acted in good faith and in reliance upon the representation and  
 160 appearance of the buyer or recipient in the belief that the  
 161 buyer or recipient was 21 ~~18~~ years of age or older.

162 Section 7. Subsections (1), (2), (3), and (5) of section  
 163 569.11, Florida Statutes, are amended to read:

164 569.11 Possession, misrepresenting age or military service  
 165 to purchase, and purchase of tobacco products by persons under  
 166 21 ~~18~~ years of age prohibited; penalties; jurisdiction;  
 167 disposition of fines.—

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

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

176 locally available;

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

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

184

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

188 (2) It is unlawful for any person under 21 ~~18~~ years of age  
189 to misrepresent his or her age or military service for the  
190 purpose of inducing a dealer or an agent or employee of the  
191 dealer to sell, give, barter, furnish, or deliver any tobacco  
192 product, or to purchase, or attempt to purchase, any tobacco  
193 product from a person or a vending machine. Any person under 21  
194 ~~18~~ years of age who violates a provision of this subsection  
195 commits a noncriminal violation as provided in s. 775.08(3),  
196 punishable by:

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



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

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

208  
209 Any second or subsequent violation not within the 12-week time  
210 period after the first violation is punishable as provided for a  
211 first violation.

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

221 (5) (a) If a person under 21 ~~18~~ years of age is found by  
222 the court to have committed a noncriminal violation under this  
223 section and that person has failed to complete community  
224 service, pay the fine as required by paragraph (1) (a) or  
225 paragraph (2) (a), or attend a school-approved anti-tobacco

226 | program, if locally available, the court must direct the  
 227 | Department of Highway Safety and Motor Vehicles to withhold  
 228 | issuance of or suspend the driver license or driving privilege  
 229 | of that person for a period of 30 consecutive days.

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

237 |       Section 8. Paragraph (b) of subsection (2) and subsection  
 238 | (3) of section 569.12, Florida Statutes, are amended to read:

239 |       569.12 Jurisdiction; tobacco product enforcement officers  
 240 | or agents; enforcement.—

241 |       (2)

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

247 |       (3) A correctional probation officer as defined in s.  
 248 | 943.10(3) is authorized to issue a citation to a person under 21  
 249 | years of age ~~the age of 18~~ when, based upon personal  
 250 | investigation, the officer has reasonable cause to believe that

251 the person has committed a civil infraction in violation of s.  
 252 569.11.

253 Section 9. Section 569.14, Florida Statutes, is amended to  
 254 read:

255 569.14 Posting of a sign stating that the sale of tobacco  
 256 products to persons under 21 ~~18~~ years of age is unlawful;  
 257 enforcement; penalty.—

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

264 (2) A dealer that sells tobacco products ~~and nicotine~~  
 265 ~~products or nicotine dispensing devices, as defined in s.~~  
 266 ~~877.112,~~ may use a sign that substantially states the following:  
 267 THE SALE OF TOBACCO PRODUCTS, INCUDING ELECTRONIC SMOKING  
 268 DEVICES ~~NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO~~  
 269 PERSONS UNDER 21 YEARS OF AGE ~~THE AGE OF 18~~ IS AGAINST FLORIDA  
 270 LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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

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

276 (4) Any dealer that sells tobacco products shall provide  
277 at the checkout counter in a location clearly visible to the  
278 dealer or the dealer's agent or employee instructional material  
279 in a calendar format or similar format to assist in determining  
280 whether a person is of legal age to purchase tobacco products.  
281 This point of sale material must contain substantially the  
282 following language:

283 IF YOU WERE NOT BORN BEFORE THIS DATE

284 (insert date and applicable year)

285 YOU CANNOT BUY TOBACCO PRODUCTS.

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

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

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

297 Section 10. Subsection (4) of section 569.19, Florida  
298 Statutes, is amended to read:

299 569.19 Annual report.—The division shall report annually  
300 with written findings to the Legislature and the Governor by

301 December 31, on the progress of implementing the enforcement  
302 provisions of this chapter. This must include, but is not  
303 limited to:

304 (4) The number of persons under 21 years of age ~~18~~ cited  
305 for violations of s. 569.11 and sanctions imposed as a result of  
306 citation.

307 Section 11. Section 877.112, Florida Statutes, is  
308 repealed.

309 Section 12. Paragraph (a) of subsection (5) of section  
310 210.095, Florida Statutes, is amended to read:

311 210.095 Mail order, Internet, and remote sales of tobacco  
312 products; age verification.—

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

316 (a) Include as part of the shipping documents, in a clear  
317 and conspicuous manner, the following statement: "Tobacco  
318 Products: Florida law prohibits shipping to individuals under 21  
319 ~~18~~ years of age and requires the payment of all applicable  
320 taxes."

321  
322 If the person accepting a purchase order for a delivery sale  
323 delivers the tobacco products without using a delivery service,  
324 the person must comply with all of the requirements of this  
325 section which apply to a delivery service. Any failure to comply

326 | with a requirement of this section constitutes a violation  
 327 | thereof.

328 |         Section 13. Subsections (2) and (3) of section 322.056,  
 329 | Florida Statutes, are amended to read:

330 |             322.056 Mandatory revocation or suspension of, or delay of  
 331 | eligibility for, driver license for persons under age 18 found  
 332 | guilty of certain alcohol, drug, or tobacco offenses;  
 333 | prohibition.—

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

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

- 345 |                 1. For the first violation, for 30 days.
- 346 |                 2. For the second violation within 12 weeks of the first  
 347 | violation, for 45 days.

348 |             (b) The person's driver license or driving privilege is  
 349 | under suspension or revocation for any reason, the court shall  
 350 | direct the department to extend the period of suspension or

351 revocation by an additional period as follows:

352 1. For the first violation, for 30 days.

353 2. For the second violation within 12 weeks of the first  
354 violation, for 45 days.

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

359 1. For the first violation, for 30 days.

360 2. For the second violation within 12 weeks of the first  
361 violation, for 45 days.

362

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

367 (3) If a person under 18 years of age is found by the  
368 court to have committed a third violation of s. 569.11 ~~or s.~~  
369 ~~877.112(6) or (7)~~ within 12 weeks of the first violation, the  
370 court must direct the Department of Highway Safety and Motor  
371 Vehicles to suspend or withhold issuance of his or her driver  
372 license or driving privilege for 60 consecutive days. Any third  
373 violation of s. 569.11 ~~or s. 877.112(6) or (7)~~ not within the  
374 12-week period after the first violation will be treated as a  
375 first violation and in the same manner as provided in subsection

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376 (2) .

377 Section 14. Subsection (1) of section 386.212, Florida  
378 Statutes, is amended to read:

379 386.212 Smoking prohibited near school property; penalty.—

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

386 Section 15. This act shall take effect July 1, 2017.