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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2019	.	
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The Committee on Rules (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

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

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



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12           (a) "Local government" means a county, municipality, or  
13 special district.

14           (b) "Minimum age" means the lawful age to purchase or  
15 knowingly possess tobacco products, nicotine products, or  
16 nicotine dispensing devices.

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

19           (d) "Nicotine product" has the same meaning as in s.  
20 877.112.

21           (e) "Retail licensure" means any certification,  
22 registration, or license that is required for a person, firm,  
23 association, or corporation to deal, at retail, with or  
24 regarding any tobacco products.

25           (f) "Tobacco products" has the same meaning as in s.  
26 569.002.

27           (2) PREEMPTION.—The establishment of the minimum age for  
28 the sale and delivery of tobacco products, nicotine products, or  
29 nicotine dispensing devices, and the regulation of marketing as  
30 it relates to the minimum age regarding such products, is  
31 preempted to the state. Nothing in this section shall be  
32 construed to affect a local government's ability to require  
33 retail licensure for the sale of tobacco products.

34           Section 3. Present paragraphs (b) through (f) of subsection  
35 (1) of section 210.095, Florida Statutes, are redesignated as  
36 paragraphs (a) through (e), respectively, a new paragraph (f) is  
37 added to that section, and present paragraph (a) of subsection  
38 (1), paragraph (c) of subsection (2), paragraph (a) of  
39 subsection (3), paragraph (a) of subsection (4), subsection (5),  
40 and paragraphs (a), (b), (e), and (g) of subsection (8) of that



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41 section are amended, to read:

42 210.095 Mail order, Internet, and remote sales of tobacco  
43 products; age verification.—

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

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

47 (f) "The minimum age for purchase" means 18 years of age  
48 for cigars and 21 years of age for any other tobacco product.

49 (2)

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

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

57 (a) Obtains from the individual submitting the order a  
58 certification that includes:

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

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

63 a. Certifies the address and date of birth of the  
64 individual; and

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

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

69 (II) Selling tobacco products to individuals under the



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70 legal minimum purchase age; and

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

73

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

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

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

82

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

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

88 (a) Include as part of the shipping documents, in a clear  
89 and conspicuous manner, the following statement: "Tobacco  
90 Products: Florida law prohibits shipping cigars to individuals  
91 under 18 years of age, prohibits shipping any other tobacco  
92 product to individuals under 21 years of age, and requires the  
93 payment of all applicable taxes."

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

96 1. The individual submitting the order for the delivery  
97 sale or another individual who is the minimum age for purchase  
98 ~~adult~~ who resides at the individual's address to sign his or her



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99 name to accept delivery of the shipping container. Proof of the  
100 legal minimum purchase age of the individual accepting delivery  
101 is required only if the individual appears to be under 27 years  
102 of age.

103 2. Proof that the individual is either the addressee or the  
104 individual who is the minimum age for purchase ~~adult~~ designated  
105 by the addressee, in the form of a valid, government-issued  
106 identification card bearing a photograph of the individual who  
107 signs to accept delivery of the shipping container.

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

110  
111 If the person accepting a purchase order for a delivery sale  
112 delivers the tobacco products without using a delivery service,  
113 the person must comply with all of the requirements of this  
114 section which apply to a delivery service. Any failure to comply  
115 with a requirement of this section constitutes a violation  
116 thereof.

117 (8) (a) Except as otherwise provided in this section, a  
118 violation of this section by a person other than an individual  
119 who is not the minimum age for purchase ~~an adult~~ is a  
120 misdemeanor of the first degree, punishable as provided in s.  
121 775.082 or s. 775.083, and:

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

125 2. For a second or subsequent violation of this section,  
126 the person shall be fined \$5,000 or five times the retail value  
127 of the tobacco products involved in the violation, whichever is



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128 greater.

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

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

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

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

147 386.212 Smoking prohibited near school property; penalty.—

148 (1) It is unlawful for any person under 18 years of age to  
149 smoke a cigar, or any person under 21 years of age to smoke any  
150 other tobacco product, in, on, or within 1,000 feet of the real  
151 property comprising a public or private elementary, middle, or  
152 secondary school between the hours of 6 a.m. and midnight. This  
153 section does not apply to any person occupying a moving vehicle  
154 or within a private residence.

155 Section 5. Present subsections (3) through (7) of section  
156 569.002, Florida Statutes, are redesignated as subsections (4)



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157 through (8), respectively, a new subsection (3) is added to that  
158 section, and present subsection (7) is amended, to read:

159 569.002 Definitions.—As used in this chapter, the term:

160 (3) "The minimum age for purchase" means 18 years of age  
161 for cigars and 21 years of age for any other tobacco product.

162 (8)(7) "Any person under the minimum age of purchase 18"  
163 does not include any person under the minimum age of purchase 18  
164 who:

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

167 (a)(b) Is in the military reserve or on active duty in the  
168 Armed Forces of the United States; or

169 ~~(c) Is otherwise emancipated by a court of competent~~  
170 ~~jurisdiction and released from parental care and responsibility;~~  
171 ~~or~~

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

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

177 569.007 Sale or delivery of tobacco products;  
178 restrictions.—

179 (1) In order to prevent persons under the minimum age of  
180 purchase 18 years of age from purchasing or receiving tobacco  
181 products, the sale or delivery of tobacco products is  
182 prohibited, except:

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

185 (b) Sales from a vending machine are prohibited under the



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186 provisions of paragraph (1) (a) and are only permissible from a  
187 machine that is equipped with an operational lockout device  
188 which is under the control of the dealer or the dealer's agent  
189 or employee who directly regulates the sale of items through the  
190 machine by triggering the lockout device to allow the dispensing  
191 of one tobacco product. The lockout device must include a  
192 mechanism to prevent the machine from functioning if the power  
193 source for the lockout device fails or if the lockout device is  
194 disabled, and a mechanism to ensure that only one tobacco  
195 product is dispensed at a time.

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

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

201 569.0075 Gift of sample tobacco products prohibited.—The  
202 gift of sample tobacco products to any person under the minimum  
203 age for purchase ~~age of 18~~ by an entity licensed or permitted  
204 under the provisions of chapter 210 or this chapter, or by an  
205 employee of such entity, is prohibited and is punishable as  
206 provided in s. 569.101.

207 Section 8. Subsections (1), (2), and (3) of section  
208 569.008, Florida Statutes, are amended to read:

209 569.008 Responsible retail tobacco products dealers;  
210 qualifications; mitigation of disciplinary penalties; diligent  
211 management and supervision; presumption.—

212 (1) The Legislature intends to prevent the sale of tobacco  
213 products to persons under the minimum age for purchase ~~18 years~~  
214 ~~of age~~ and to encourage retail tobacco products dealers to





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215 | comply with responsible practices in accordance with this  
216 | section.

217 |       (2) To qualify as a responsible retail tobacco products  
218 | dealer, the dealer must establish and implement procedures  
219 | designed to ensure that the dealer's employees comply with the  
220 | provisions of this chapter. The dealer must provide a training  
221 | program for the dealer's employees which addresses the use and  
222 | sale of tobacco products and which includes at least the  
223 | following topics:

224 |       (a) Laws covering the sale of tobacco products.

225 |       (b) Methods of recognizing and handling customers under the  
226 | minimum age for purchase ~~18 years of age~~.

227 |       (c) Procedures for proper examination of identification  
228 | cards in order to verify that customers are not under the  
229 | minimum age for purchase ~~18 years of age~~.

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

232 |       (3) In determining penalties under s. 569.006, the division  
233 | may mitigate penalties imposed against a dealer because of an  
234 | employee's illegal sale of a tobacco product to a person under  
235 | the minimum age for purchase ~~18 years of age~~ if the following  
236 | conditions are met:

237 |       (a) The dealer is qualified as a responsible dealer under  
238 | this section.

239 |       (b) The dealer provided the training program required under  
240 | subsection (2) to that employee before the illegal sale  
241 | occurred.

242 |       (c) The dealer had no knowledge of that employee's  
243 | violation at the time of the violation and did not direct,



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244 approve, or participate in the violation.

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

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

249 569.101 Selling, delivering, bartering, furnishing, or  
250 giving tobacco products to persons under the minimum age for  
251 purchase ~~18 years of age~~; criminal penalties; defense.—

252 (1) It is unlawful to sell, deliver, barter, furnish, or  
253 give, directly or indirectly, to any person who is under the  
254 minimum age for purchase ~~18 years of age~~, any tobacco product.

255 (2) Any person who violates subsection (1) commits a  
256 misdemeanor of the second degree, punishable as provided in s.  
257 775.082 or s. 775.083. However, any person who violates  
258 subsection (1) for a second or subsequent time within 1 year of  
259 the first violation, commits a misdemeanor of the first degree,  
260 punishable as provided in s. 775.082 or s. 775.083.

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

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

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

269 (c) Such person carefully checked a driver license or an  
270 identification card issued by this state or another state of the  
271 United States, a passport, or a United States armed services  
272 identification card presented by the buyer or recipient and



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273 acted in good faith and in reliance upon the representation and  
274 appearance of the buyer or recipient in the belief that the  
275 buyer or recipient was the minimum age for purchase ~~18 years of~~  
276 ~~age~~ or older.

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

279 569.11 Possession, Misrepresenting age or military service  
280 to purchase, and purchase of tobacco products by persons under  
281 the minimum age for purchase ~~18 years of age~~ prohibited;  
282 penalties; jurisdiction; disposition of fines.—

283 (1) It is unlawful for any person under the minimum age for  
284 purchase ~~18 years of age~~ to knowingly possess any tobacco  
285 product. Any person under the minimum age for purchase ~~18 years~~  
286 ~~of age~~ who violates the provisions of this subsection commits a  
287 noncriminal violation as provided in s. 775.08(3), punishable  
288 by:

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

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

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

300  
301 Any second or subsequent violation not within the 12-week time



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302 period after the first violation is punishable as provided for a  
303 first violation.

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

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

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

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

325  
326 Any second or subsequent violation not within the 12-week time  
327 period after the first violation is punishable as provided for a  
328 first violation.

329 (3) Any person under the minimum age for purchase ~~18 years~~  
330 ~~of age~~ cited for committing a noncriminal violation under this



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331 section must sign and accept a civil citation indicating a  
332 promise to appear before the county court or comply with the  
333 requirement for paying the fine and must attend a school-  
334 approved anti-tobacco program, if locally available. If a fine  
335 is assessed for a violation of this section, the fine must be  
336 paid within 30 days after the date of the citation or, if a  
337 court appearance is mandatory, within 30 days after the date of  
338 the hearing.

339 (4) A person charged with a noncriminal violation under  
340 this section must appear before the county court or comply with  
341 the requirement for paying the fine. The court, after a hearing,  
342 shall make a determination as to whether the noncriminal  
343 violation was committed. If the court finds the violation was  
344 committed, it shall impose an appropriate penalty as specified  
345 in subsection (1) or subsection (2). A person who participates  
346 in community service shall be considered an employee of the  
347 state for the purpose of chapter 440, for the duration of such  
348 service.

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

358 (b) If a person under the minimum age for purchase 18 years  
359 ~~of age~~ is found by the court to have committed a noncriminal



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360 violation under this section and that person has failed to pay  
361 the applicable fine as required by paragraph (1)(b) or paragraph  
362 (2)(b), the court must direct the Department of Highway Safety  
363 and Motor Vehicles to withhold issuance of or suspend the driver  
364 license or driving privilege of that person for a period of 45  
365 consecutive days.

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

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

377 569.12 Jurisdiction; tobacco product enforcement officers  
378 or agents; enforcement.—

379 (2)

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

385 (3) A correctional probation officer as defined in s.  
386 943.10(3) is authorized to issue a citation to a person under  
387 the minimum age for purchase ~~of 18~~ when, based upon personal  
388 investigation, the officer has reasonable cause to believe that



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389 the person has committed a civil infraction in violation of s.  
390 569.11.

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

393 569.14 Posting of a sign stating that the sale of tobacco  
394 products to persons under the minimum age for purchase ~~18 years~~  
395 ~~of age~~ is unlawful; enforcement; penalty.-

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

399  
400 THE SALE OF CIGARS TO PERSONS UNDER THE AGE OF 18, OR  
401 ANY OTHER TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF  
402 21, ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS  
403 REQUIRED FOR PURCHASE.

404  
405 (2) A dealer that sells tobacco products and nicotine  
406 products or nicotine dispensing devices, as defined in s.  
407 877.112, may use a sign that substantially states the following:

408  
409 THE SALE OF TOBACCO PRODUCTS (EXCLUDING CIGARS),  
410 NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO  
411 PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW.  
412 THE SALE OF CIGARS TO PERSONS UNDER THE AGE OF 18 IS  
413 AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR  
414 PURCHASE.

415  
416 A dealer that uses a sign as described in this subsection meets  
417 the signage requirements of subsection (1) and s. 877.112.



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

421 (4) Any dealer that sells tobacco products shall provide at  
422 the checkout counter in a location clearly visible to the dealer  
423 or the dealer's agent or employee instructional material in a  
424 calendar format or similar format to assist in determining  
425 whether a person is of legal age to purchase tobacco products.  
426 This point of sale material must contain substantially the  
427 following language:

428  
429 IF YOU WERE NOT BORN BEFORE THIS DATE  
430 (insert date and applicable year)  
431 YOU CANNOT BE SOLD ANY CIGARS.

432  
433 IF YOU WERE NOT BORN BEFORE THIS DATE  
434 (insert date and applicable year)  
435 YOU CANNOT BE SOLD ANY OTHER ~~BUY~~ TOBACCO PRODUCTS.

436  
437 Upon approval by the division, in lieu of a calendar a dealer  
438 may use card readers, scanners, or other electronic or automated  
439 systems that can verify whether a person is of legal age to  
440 purchase tobacco products. Failure to comply with the provisions  
441 contained in this subsection shall result in imposition of  
442 administrative penalties as provided in s. 569.006.

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

445 (6) Any person who fails to comply with subsection (1) is  
446 guilty of a misdemeanor of the second degree, punishable as





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447 provided in s. 775.082 or s. 775.083.

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

450 569.19 Annual report.—The division shall report annually  
451 with written findings to the Legislature and the Governor by  
452 December 31, on the progress of implementing the enforcement  
453 provisions of this chapter. This must include, but is not  
454 limited to:

455 (3) The number of violations for selling tobacco products  
456 to persons under the minimum age for purchase ~~18~~, and the  
457 results of administrative hearings on the above and related  
458 issues.

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

462 Section 14. Section 877.112, Florida Statutes, is amended  
463 to read:

464 877.112 Nicotine products and nicotine dispensing devices;  
465 prohibitions for persons under 21 years of age ~~minors~~;  
466 penalties; civil fines; signage requirements; preemption.—

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

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

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

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

475 (b) ~~(a)~~ "Nicotine dispensing device" means any product that



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476 employs an electronic, chemical, or mechanical means to produce  
477 vapor from a nicotine product, including, but not limited to, an  
478 electronic cigarette, electronic cigar, electronic cigarillo,  
479 electronic pipe, or other similar device or product, any  
480 replacement cartridge for such device, and any other container  
481 of nicotine in a solution or other form intended to be used with  
482 or within an electronic cigarette, electronic cigar, electronic  
483 cigarillo, electronic pipe, or other similar device or product.

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

- 488 1. Tobacco product, as defined in s. 569.002;  
489 2. Product regulated as a drug or device by the United  
490 States Food and Drug Administration under Chapter V of the  
491 federal Food, Drug, and Cosmetic Act; or  
492 3. Product that contains incidental nicotine.

493 (d)~~(e)~~ "Self-service merchandising" means the open display  
494 of nicotine products or nicotine dispensing devices, whether  
495 packaged or otherwise, for direct retail customer access and  
496 handling before purchase without the intervention or assistance  
497 of the retailer or the retailer's owner, employee, or agent. An  
498 open display of such products and devices includes the use of an  
499 open display unit.

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



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

510           (4) PENALTIES.—Any person who violates subsection (2) or  
511 subsection (3) commits a misdemeanor of the second degree,  
512 punishable as provided in s. 775.082 or s. 775.083. However, any  
513 person who violates subsection (2) or subsection (3) for a  
514 second or subsequent time within 1 year of the first violation  
515 commits a misdemeanor of the first degree, punishable as  
516 provided in s. 775.082 or s. 775.083.

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

521           (a) The buyer or recipient falsely evidenced that she or he  
522 was 21 ~~18~~ years of age or older;

523           (b) The appearance of the buyer or recipient was such that  
524 a prudent person would believe the buyer or recipient to be 21  
525 ~~18~~ years of age or older; and

526           (c) Such person carefully checked a driver license or an  
527 identification card issued by this state or another state of the  
528 United States, a passport, or a United States Armed Services  
529 identification card presented by the buyer or recipient and  
530 acted in good faith and in reliance upon the representation and  
531 appearance of the buyer or recipient in the belief that the  
532 buyer or recipient was 21 ~~18~~ years of age or older.

533           (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR



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534 NICOTINE DISPENSING DEVICES BY PERSONS UNDER 21 YEARS OF AGE  
535 ~~MINORS~~.—It is unlawful for any person under 21 ~~18~~ years of age  
536 to knowingly possess any nicotine product or a nicotine  
537 dispensing device. Any person under 21 ~~18~~ years of age who  
538 violates this subsection commits a noncriminal violation as  
539 defined in s. 775.08(3), punishable by:

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

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

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

551  
552 Any second or subsequent violation not within the 12-week time  
553 period after the first violation is punishable as provided for a  
554 first violation.

555 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for  
556 any person under 21 ~~18~~ years of age to misrepresent his or her  
557 age or military service for the purpose of inducing a retailer  
558 of nicotine products or nicotine dispensing devices or an agent  
559 or employee of such retailer to sell, give, barter, furnish, or  
560 deliver any nicotine product or nicotine dispensing device, or  
561 to purchase, or attempt to purchase, any nicotine product or  
562 nicotine dispensing device from a person or a vending machine.



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563 Any person under 21 ~~18~~ years of age who violates this subsection  
564 commits a noncriminal violation as defined in s. 775.08(3),  
565 punishable by:

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

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

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

577  
578 Any second or subsequent violation not within the 12-week time  
579 period after the first violation is punishable as provided for a  
580 first violation.

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

582 (a) A person under 21 ~~18~~ years of age cited for committing  
583 a noncriminal violation under this section must sign and accept  
584 a civil citation indicating a promise to appear before the  
585 county court or comply with the requirement for paying the fine  
586 and must attend a school-approved anti-tobacco and nicotine  
587 program, if locally available. If a fine is assessed for a  
588 violation of this section, the fine must be paid within 30 days  
589 after the date of the citation or, if a court appearance is  
590 mandatory, within 30 days after the date of the hearing.

591 (b) A person charged with a noncriminal violation under



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592 this section must appear before the county court or comply with  
593 the requirement for paying the fine. The court, after a hearing,  
594 shall make a determination as to whether the noncriminal  
595 violation was committed. If the court finds the violation was  
596 committed, it shall impose an appropriate penalty as specified  
597 in subsection (6) or subsection (7). A person who participates  
598 in community service shall be considered an employee of the  
599 state for the purpose of chapter 440, for the duration of such  
600 service.

601 (c) If a person under 21 ~~18~~ years of age is found by the  
602 court to have committed a noncriminal violation under this  
603 section and that person has failed to complete community  
604 service, pay the fine as required by paragraph (6) (a) or  
605 paragraph (7) (a), or attend a school-approved anti-tobacco and  
606 nicotine program, if locally available, the court must direct  
607 the Department of Highway Safety and Motor Vehicles to withhold  
608 issuance of or suspend the driver license or driving privilege  
609 of that person for 30 consecutive days.

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

617 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all  
618 civil penalties received by a county court pursuant to  
619 subsections (6) and (7) shall be remitted by the clerk of the  
620 court to the Department of Revenue for transfer to the



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621 Department of Education to provide for teacher training and for  
622 research and evaluation to reduce and prevent the use of tobacco  
623 products, nicotine products, or nicotine dispensing devices by  
624 children. The remaining 20 percent of civil penalties received  
625 by a county court pursuant to this section shall remain with the  
626 clerk of the county court to cover administrative costs.

627 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE  
628 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

633  
634 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING  
635 DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST  
636 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

637  
638 (b) A retailer that sells nicotine products or nicotine  
639 dispensing devices shall provide at the checkout counter in a  
640 location clearly visible to the retailer or the retailer's agent  
641 or employee instructional material in a calendar format or  
642 similar format to assist in determining whether a person is of  
643 legal age to purchase nicotine products or nicotine dispensing  
644 devices. This point of sale material must contain substantially  
645 the following language:

646  
647 IF YOU WERE NOT BORN BEFORE THIS DATE  
648 (insert date and applicable year)  
649 YOU CANNOT BUY NICOTINE PRODUCTS OR



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NICOTINE DISPENSING DEVICES.

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

(11) SELF-SERVICE MERCHANDISING PROHIBITED.—

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

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

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

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

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

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

2. Sales from a vending machine are prohibited under subparagraph 1. and are only permissible from a machine that is





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679 equipped with an operational lockout device which is under the  
680 control of the retailer of nicotine products or nicotine  
681 dispensing devices or such retailer's agent or employee who  
682 directly regulates the sale of items through the machine by  
683 triggering the lockout device to allow the dispensing of one  
684 nicotine product or nicotine dispensing device. The lockout  
685 device must include a mechanism to prevent the machine from  
686 functioning, if the power source for the lockout device fails or  
687 if the lockout device is disabled, and a mechanism to ensure  
688 that only one nicotine product or nicotine dispensing device is  
689 dispensed at a time.

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

692 (c) A retailer of nicotine products or nicotine dispensing  
693 devices or such retailer's agent or employee may require proof  
694 of age of a purchaser of such products or devices before selling  
695 the product or device to that person.

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

697  
698 ===== T I T L E A M E N D M E N T =====

699 And the title is amended as follows:

700 Delete everything before the enacting clause  
701 and insert:

702 A bill to be entitled  
703 An act relating to the tobacco and nicotine products;  
704 providing a short title; creating s. 163.085, F.S.;  
705 defining terms; preempting the establishment of the  
706 minimum age for the sale or delivery of tobacco  
707 products, nicotine products, or nicotine dispensing



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708 devices to the state; providing exceptions; amending  
709 s. 210.095, F.S.; deleting the definition of the term  
710 "adult"; defining the term "the minimum age for  
711 purchase"; conforming provisions to changes made by  
712 the act; amending s. 386.212, F.S.; revising the age  
713 under which it is unlawful to smoke in, on, or near  
714 school property; amending s. 569.002, F.S.; defining  
715 the terms "the minimum age for purchase" and "any  
716 person under the minimum age for purchase"; replacing  
717 the term "any person under the age of 18" with "any  
718 person under the minimum age for purchase"; amending  
719 s. 569.007, F.S.; providing that it is unlawful to  
720 sell or deliver tobacco products to persons under the  
721 minimum age for purchase; providing an exception;  
722 amending s. 569.0075, F.S.; revising the age under  
723 which the gift of tobacco products to a person by  
724 certain entities is prohibited; amending s. 569.008,  
725 F.S.; revising legislative intent to reflect that the  
726 Legislature intends to prevent the sale of certain  
727 tobacco products to persons under a specified age;  
728 conforming provisions to changes made by the act;  
729 amending s. 569.101, F.S.; revising the age limitation  
730 that applies to the sale, delivery, bartering,  
731 furnishing, or giving of certain tobacco products;  
732 conforming provisions to changes made by the act;  
733 amending s. 569.11, F.S.; revising the age limitation  
734 that applies to possessing tobacco products; revising  
735 the age limitation that applies to unlawful  
736 misrepresentation of age or military service for



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737 certain purposes; conforming provisions to changes  
738 made by the act; amending ss. 569.12, 569.14, and  
739 569.19, F.S.; conforming provisions to changes made by  
740 the act; amending s. 877.112, F.S.; defining the term  
741 "any person under 21 years of age"; revising the age  
742 limitations relating to nicotine products and nicotine  
743 dispensing devices; conforming provisions to changes  
744 made by the act; providing an effective date.