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LEGISLATIVE ACTION

Senate

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House

The Committee on Innovation, Industry, and Technology (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 56 - 405

and insert:

cigar, pipe tobacco, chewing tobacco, snuff, or snus; or

(b) Any component, part, or accessory of a product described in paragraph (a), whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

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11 The term does not include drugs, devices, or combination
12 products authorized for sale by the United States Food and Drug
13 Administration, as those terms are defined in the Federal Food,
14 Drug, and Cosmetic Act ~~loose tobacco leaves, and products made~~
15 ~~from tobacco leaves, in whole or in part, and cigarette~~
16 ~~wrappers, which can be used for smoking, sniffing, or chewing.~~

17 ~~(7) "Any person under the age of 18" does not include any~~
18 ~~person under the age of 18 who:~~

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

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

23 ~~(c) Is otherwise emancipated by a court of competent~~
24 ~~jurisdiction and released from parental care and responsibility;~~
25 ~~or~~

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

29 Section 4. Paragraph (a) of subsection (2) of section
30 569.003, Florida Statutes, is amended to read:

31 569.003 Retail tobacco products dealer permits;
32 application; qualifications; fees; renewal; duplicates.-

33 (2) (a) Permits may be issued only to persons who are 21 ~~18~~
34 years of age or older or to corporations the officers of which
35 are 21 ~~18~~ years of age or older.

36 Section 5. Subsections (1) and (2) of section 569.007,
37 Florida Statutes, are amended to read:

38 569.007 Sale or delivery of tobacco products;
39 restrictions.-



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40 (1) In order to prevent persons under 21 ~~18~~ years of age
41 from purchasing or receiving tobacco products, the sale or
42 delivery of tobacco products is prohibited, except:

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

45 (b) Sales from a vending machine are prohibited under ~~the~~
46 ~~provisions of~~ paragraph ~~(1)~~(a) and are only permissible from a
47 machine that is located in an establishment that prohibits
48 persons under 21 years of age on the licensed premises at all
49 times equipped with an operational lockout device which is under
50 the control of the dealer or the dealer's agent or employee who
51 directly regulates the sale of items through the machine by
52 triggering the lockout device to allow the dispensing of one
53 tobacco product. The lockout device must include a mechanism to
54 prevent the machine from functioning if the power source for the
55 lockout device fails or if the lockout device is disabled, and a
56 mechanism to ensure that only one tobacco product is dispensed
57 at a time.

58 ~~(2) The provisions of subsection (1) shall not apply to an~~
59 ~~establishment that prohibits persons under 18 years of age on~~
60 ~~the licensed premises.~~

61 Section 6. Section 569.101, Florida Statutes, is amended to
62 read:

63 569.101 Selling, delivering, bartering, furnishing, or
64 giving tobacco products to persons under 21 ~~18~~ years of age;
65 criminal penalties; defense.—

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



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69 (2) Any person who violates subsection (1) commits a
70 misdemeanor of the second degree, punishable as provided in s.
71 775.082 or s. 775.083. However, any person who violates
72 subsection (1) for a second or subsequent time within 1 year of
73 the first violation, commits a misdemeanor of the first degree,
74 punishable as provided in s. 775.082 or s. 775.083.

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

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

80 (b) The appearance of the buyer or recipient was such that
81 a prudent person would believe the buyer or recipient to be 21
82 ~~18~~ years of age or older; and

83 (c) Such person carefully checked a driver license or an
84 identification card issued by this state or another state of the
85 United States, a passport, or a United States armed services
86 identification card presented by the buyer or recipient and
87 acted in good faith and in reliance upon the representation and
88 appearance of the buyer or recipient in the belief that the
89 buyer or recipient was 21 ~~18~~ years of age or older.

90 (4) A person must verify by means of identification
91 specified in paragraph (3)(c) that a person purchasing a tobacco
92 product is not under 21 years of age. Such verification is not
93 required for any person over the age of 29.

94 Section 7. Section 877.112, Florida Statutes, is repealed.

95 Section 8. Paragraphs (a) and (b) of subsection (5) and
96 paragraphs (e) and (g) of subsection (8) of section 210.095,
97 Florida Statutes, are amended to read:



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98 210.095 Mail order, Internet, and remote sales of tobacco
99 products; age verification.—

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

103 (a) Include as part of the shipping documents, in a clear
104 and conspicuous manner, the following statement: "Tobacco
105 Products: Florida law prohibits shipping to individuals under 21
106 ~~18~~ years of age and requires the payment of all applicable
107 taxes."

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

110 1. The individual submitting the order for the delivery
111 sale or another adult who resides at the individual's address to
112 sign his or her name to accept delivery of the shipping
113 container. Proof of the legal minimum purchase age of the
114 individual accepting delivery is required only if the individual
115 appears to be under 30 ~~27~~ years of age.

116 2. Proof that the individual is either the addressee or the
117 adult designated by the addressee, in the form of a valid,
118 government-issued identification card bearing a photograph of
119 the individual who signs to accept delivery of the shipping
120 container.

121
122 If the person accepting a purchase order for a delivery sale
123 delivers the tobacco products without using a delivery service,
124 the person must comply with all of the requirements of this
125 section which apply to a delivery service. Any failure to comply
126 with a requirement of this section constitutes a violation



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127 thereof.

128 (8)

129 (e) A person who, in connection with a delivery sale,
130 delivers tobacco products on behalf of a delivery service to an
131 individual who is not an adult commits a misdemeanor of the
132 second ~~third~~ degree, punishable as provided in s. 775.082 or s.
133 775.083.

134 (g) An individual who is not an adult and who knowingly
135 violates any provision of this section commits a misdemeanor of
136 the second ~~third~~ degree, punishable as provided in s. 775.082 or
137 s. 775.083.

138 Section 9. Section 569.0075, Florida Statutes, is amended
139 to read:

140 569.0075 Gift of sample tobacco products prohibited.—The
141 gift of sample tobacco products to any person under the age of
142 21 ~~18~~ by an entity licensed or permitted under the provisions of
143 chapter 210 or this chapter, or by an employee of such entity,
144 is prohibited and is punishable as provided in s. 569.101.

145 Section 10. Subsection (1), paragraphs (b) and (c) of
146 subsection (2), and subsection (3) of section 569.008, Florida
147 Statutes, are amended to read:

148 569.008 Responsible retail tobacco products dealers;
149 qualifications; mitigation of disciplinary penalties; diligent
150 management and supervision; presumption.—

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

155 (2) To qualify as a responsible retail tobacco products



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156 dealer, the dealer must establish and implement procedures
157 designed to ensure that the dealer's employees comply with the
158 provisions of this chapter. The dealer must provide a training
159 program for the dealer's employees which addresses the use and
160 sale of tobacco products and which includes at least the
161 following topics:

162 (b) Methods of recognizing and handling customers under 21
163 ~~18~~ years of age.

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

167 (3) In determining penalties under s. 569.006, the division
168 may mitigate penalties imposed against a dealer because of an
169 employee's illegal sale of a tobacco product to a person under
170 21 ~~18~~ years of age if the following conditions are met:

171 (a) The dealer is qualified as a responsible dealer under
172 this section.

173 (b) The dealer provided the training program required under
174 subsection (2) to that employee before the illegal sale
175 occurred.

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

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

181 Section 11. Section 569.11, Florida Statutes, is amended to
182 read:

183 569.11 Possession, misrepresenting age ~~or military service~~
184 to purchase, and purchase of tobacco products by persons under



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185 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
186 disposition of fines.—

187 (1) It is unlawful for any person under 21 ~~18~~ years of age
188 to knowingly possess any tobacco product. Any person under 21 ~~18~~
189 years of age who violates this subsection commits a noncriminal
190 violation as provided in s. 775.08(3), punishable by:

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

195 (b) For a second or subsequent violation within 12 weeks
196 after the first violation, a \$25 fine.

197
198 Any second or subsequent violation not within the 12-week period
199 after the first violation is punishable as provided for a first
200 violation.

201 (2) It is unlawful for any person under 21 ~~18~~ years of age
202 to misrepresent his or her age ~~or military service~~ for the
203 purpose of inducing a dealer or an agent or employee of the
204 dealer to sell, give, barter, furnish, or deliver any tobacco
205 product, or to purchase, or attempt to purchase, any tobacco
206 product from a person or a vending machine. Any person under 21
207 ~~18~~ years of age who violates this subsection commits a
208 noncriminal violation as provided in s. 775.08(3), punishable
209 by:

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



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214 (b) For a second or subsequent violation within 12 weeks
215 after the first violation, a \$25 fine.

216

217 Any second or subsequent violation not within the 12-week period
218 after the first violation is punishable as provided for a first
219 violation.

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

229 (4) A person charged with a noncriminal violation under
230 this section must appear before the county court or comply with
231 the requirement for paying the fine. The court, after a hearing,
232 shall make a determination as to whether the noncriminal
233 violation was committed. If the court finds the violation was
234 committed, it shall impose an appropriate penalty as specified
235 in subsection (1) or subsection (2). A person who participates
236 in community service shall be considered an employee of the
237 state for the purpose of chapter 440, for the duration of such
238 service.

239 (5) (a) If a person under 21 ~~18~~ years of age is found by the
240 court to have committed a noncriminal violation under this
241 section and that person has failed to complete community
242 service, pay the fine as required by paragraph (1) (a) or



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243 paragraph (2) (a), or attend a school-approved anti-tobacco
244 program, if locally available, the court may direct the
245 Department of Highway Safety and Motor Vehicles to withhold
246 issuance of or suspend the driver license or driving privilege
247 of that person for a period of 30 consecutive days.

248 (b) If a person under 21 ~~18~~ years of age is found by the
249 court to have committed a noncriminal violation under this
250 section and that person has failed to pay the applicable fine as
251 required by paragraph (1) (b) or paragraph (2) (b), the court may
252 direct the Department of Highway Safety and Motor Vehicles to
253 withhold issuance of or suspend the driver license or driving
254 privilege of that person for a period of 45 consecutive days.

255 (6) Eighty percent of all civil penalties received by a
256 county court pursuant to this section shall be remitted by the
257 clerk of the court to the Department of Revenue for transfer to
258 the Department of Education to provide for teacher training and
259 for research and evaluation to reduce and prevent the use of
260 tobacco products by children. The remaining 20 percent of civil
261 penalties received by a county court pursuant to this section
262 shall remain with the clerk of the county court to cover
263 administrative costs.

264 Section 12. Paragraph (b) of subsection (2) and subsection
265 (3) of section 569.12, Florida Statutes, are amended to read:

266 569.12 Jurisdiction; tobacco product enforcement officers
267 or agents; enforcement.—

268 (2)

269 (b) A tobacco product enforcement officer is authorized to
270 issue a citation to a person under the age of 21 ~~18~~ when, based
271 upon personal investigation, the officer has reasonable cause to



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272 believe that the person has committed a civil infraction in
273 violation of s. 386.212 or s. 569.11.

274 (3) A correctional probation officer as defined in s.
275 943.10(3) is authorized to issue a citation to a person under
276 the age of 21 ~~18~~ when, based upon personal investigation, the
277 officer has reasonable cause to believe that the person has
278 committed a civil infraction in violation of s. 569.11.

279 Section 13. Section 569.14, Florida Statutes, is amended to
280 read:

281 569.14 Posting of a sign stating that the sale of tobacco
282 products to persons under 21 ~~18~~ years of age is unlawful;
283 enforcement; penalty.-

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

287
288 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE
289 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
290 REQUIRED FOR PURCHASE.

291
292 ~~(2) A dealer that sells tobacco products and nicotine~~
293 ~~products or nicotine dispensing devices, as defined in s.~~
294 ~~877.112, may use a sign that substantially states the following:~~

295
296 ~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR~~
297 ~~NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE~~
298 ~~OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED~~
299 ~~FOR PURCHASE.~~

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

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

306 (3)~~(4)~~ Any dealer that sells tobacco products shall provide
307 at the checkout counter in a location clearly visible to the
308 dealer or the dealer's agent or employee instructional material
309 in a calendar format or similar format to assist in determining
310 whether a person is of legal age to purchase tobacco products.
311 This point of sale material must contain substantially the
312 following language:

313
314 IF YOU WERE NOT BORN BEFORE THIS DATE
315 (insert date and applicable year)
316 YOU CANNOT BUY TOBACCO PRODUCTS.
317

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

324 (4)~~(5)~~ The division, through its agents and inspectors,
325 shall enforce this section.

326 (5)~~(6)~~ Any person who fails to comply with subsection (1)
327 is guilty of a misdemeanor of the second degree, punishable as
328 provided in s. 775.082 or s. 775.083.

329 Section 14. Subsections (3) and (4) of section 569.19,



330 Florida Statutes, are amended to read:

331 569.19 Annual report.—The division shall report annually
332 with written findings to the Legislature and the Governor by
333 December 31, on the progress of implementing the enforcement
334 provisions of this chapter. This must include, but is not
335 limited to:

336 (3) The number of violations for selling tobacco products
337 to persons under age 21 ~~18~~, and the results of administrative
338 hearings on the above and related issues.

339 (4) The number of persons under age 21 ~~18~~ cited for
340 violations of s. 569.11 and sanctions imposed as a result of
341 citation.

342 Section 15. This act shall take effect October 1, 2020, if
343 SB 1394 or similar legislation is adopted in the same
344 legislative

345
346 ===== T I T L E A M E N D M E N T =====

347 And the title is amended as follows:

348 Delete lines 8 - 20

349 and insert:

350 definition of the term "tobacco products"; deleting
351 the term "any person under the age of 18"; amending s.
352 569.003, F.S.; revising the age limits for retail
353 tobacco products dealer permits; amending s. 569.007,
354 F.S.; revising prohibitions on the sale of tobacco
355 products from vending machines; conforming provisions
356 to federal law; amending s. 569.101, F.S.; requiring
357 that the age of persons purchasing tobacco products be
358 verified under certain circumstances; repealing s.



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359 877.112, F.S., relating to nicotine products and
360 nicotine dispensing devices; amending s. 210.095,
361 F.S.; conforming provisions to federal law; making
362 technical changes; amending ss. 569.0075, 569.008,
363 569.11, 569.12, 569.14,