

By the Committees on Appropriations; Innovation, Industry, and Technology; and Health Policy; and Senators Simmons, Flores, and Mayfield

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1 A bill to be entitled
2 An act relating to tobacco and nicotine products;
3 amending s. 210.15, F.S.; revising the age limits for
4 permits relating to cigarettes; amending s. 386.212,
5 F.S.; revising age and time restrictions relating to
6 the prohibition of smoking and vaping near school
7 property; revising civil penalties; amending s.
8 569.002, F.S.; defining the term "liquid nicotine
9 product"; revising the definition of the term "tobacco
10 products"; deleting the term "any person under the age
11 of 18"; amending s. 569.003, F.S.; revising the age
12 limits for retail tobacco products dealer permits;
13 amending s. 569.007, F.S.; revising prohibitions on
14 the sale of tobacco products from vending machines;
15 providing requirements for the delivery of vapor-
16 generating electronic devices and liquid nicotine
17 products; conforming provisions to federal law;
18 prohibiting a person from selling, delivering,
19 bartering, furnishing, or giving flavored liquid
20 nicotine products to any other person; defining the
21 term "flavored liquid nicotine product"; providing
22 applicability; amending s. 569.101, F.S.; requiring
23 that the age of persons purchasing tobacco products be
24 verified under certain circumstances; amending s.
25 569.11, F.S.; revising civil penalties; conforming
26 provisions to federal law; conforming provisions to
27 changes made by the act; repealing s. 877.112, F.S.,
28 relating to nicotine products and nicotine dispensing
29 devices; amending s. 210.095, F.S.; conforming

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30 provisions to federal law; making technical changes;
31 amending ss. 569.0075, 569.008, 569.12, 569.14, and
32 569.19, F.S.; conforming provisions to federal law;
33 conforming provisions to changes made by the act;
34 providing a contingent effective date.
35

36 Be It Enacted by the Legislature of the State of Florida:
37

38 Section 1. Paragraph (b) of subsection (1) of section
39 210.15, Florida Statutes, is amended to read:

40 210.15 Permits.—

41 (1)

42 (b) Permits shall be issued only to persons of good moral
43 character, who are not less than 21 ~~18~~ years of age. Permits to
44 corporations shall be issued only to corporations whose officers
45 are of good moral character and not less than 21 ~~18~~ years of
46 age. There shall be no exemptions from the permit fees herein
47 provided to any persons, association of persons, or corporation,
48 any law to the contrary notwithstanding.

49 Section 2. Subsections (1) and (3) of section 386.212,
50 Florida Statutes, are amended to read:

51 386.212 Smoking and vaping prohibited near school property;
52 penalty.—

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

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59 (3) Any person issued a citation pursuant to this section
60 shall be deemed to be charged with a civil infraction punishable
61 by a maximum civil penalty not to exceed \$25, or 50 hours of
62 community service and, for persons under 18 years of age or,
63 ~~where available,~~ successful completion of a school-approved
64 anti-tobacco or anti-vaping "alternative to suspension" program.

65 Section 3. Present subsections (3) through (6) of section
66 569.002, Florida Statutes, are redesignated as subsections (4)
67 through (7), respectively, a new subsection (3) is added to that
68 section, and present subsections (6) and (7) of section 569.002,
69 Florida Statutes, are amended to read:

70 569.002 Definitions.—As used in this chapter, the term:

71 (3) "Liquid nicotine product" means a tobacco product in
72 liquid form composed of nicotine and other chemicals or
73 substances which is sold or offered for sale for use with a
74 vapor-generating electronic device.

75 (7)(6) "Tobacco products" includes:

76 (a) Any product containing, made of, or derived from
77 tobacco or nicotine that is intended for human consumption or is
78 likely to be consumed, whether inhaled, absorbed, or ingested by
79 any other means, including, but not limited to, a cigarette, a
80 cigar, pipe tobacco, chewing tobacco, snuff, or snus; or

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

85
86 The term does not include drugs, devices, or combination
87 products authorized for sale by the United States Food and Drug

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88 Administration, as those terms are defined in the Federal Food,
89 Drug, and Cosmetic Act ~~loose tobacco leaves, and products made~~
90 ~~from tobacco leaves, in whole or in part, and cigarette~~
91 ~~wrappers, which can be used for smoking, sniffing, or chewing.~~

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

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

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

98 ~~(c) Is otherwise emancipated by a court of competent~~
99 ~~jurisdiction and released from parental care and responsibility;~~
100 ~~or~~

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

104 Section 4. Paragraph (a) of subsection (2) of section
105 569.003, Florida Statutes, is amended to read:

106 569.003 Retail tobacco products dealer permits;
107 application; qualifications; fees; renewal; duplicates.—

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

111 Section 5. Subsections (1) and (2) of section 569.007,
112 Florida Statutes, are amended, and a new subsection (5) is added
113 to that section, to read:

114 569.007 Sale or delivery of tobacco products;
115 restrictions.—

116 (1) (a) In order to prevent persons under 21 ~~18~~ years of age

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117 from purchasing or receiving tobacco products, the sale or
118 delivery of tobacco products is prohibited, except:

119 1.(a) When under the direct control or line of sight of the
120 dealer or the dealer's agent or employee; or

121 2.(b) Sales from a vending machine are prohibited under
122 subparagraph 1. the provisions of paragraph (1)(a) and are only
123 permissible from a machine that is located in an establishment
124 that prohibits persons under 21 years of age on the licensed
125 premises at all times.

126 (b) Sales of vapor-generating electronic devices and liquid
127 nicotine products, other than as authorized under subparagraph
128 (a)1., are permissible only if a dealer implements an age
129 verification procedure that:

130 1. Before accepting an order for delivery, verifies that
131 the purchaser is at least 21 years of age using a commercially
132 available database, or an aggregate of databases, which is
133 regularly used for the purpose of age and identity verification;
134 and

135 2. Employs a second-step age verification to secure
136 delivery for every order by requiring the signature of the
137 purchaser upon delivery and verifying that the credit card or
138 debit card used for the purchase has been issued in the
139 purchaser's name and that the delivery address is associated
140 with the purchaser's credit card or debit card ~~equipped with an~~
141 ~~operational lockout device which is under the control of the~~
142 ~~dealer or the dealer's agent or employee who directly regulates~~
143 ~~the sale of items through the machine by triggering the lockout~~
144 ~~device to allow the dispensing of one tobacco product. The~~
145 ~~lockout device must include a mechanism to prevent the machine~~

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146 ~~from functioning if the power source for the lockout device~~
147 ~~fails or if the lockout device is disabled, and a mechanism to~~
148 ~~ensure that only one tobacco product is dispensed at a time.~~

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

152 (5) (a) A person may not sell, deliver, barter, furnish, or
153 give, directly or indirectly, flavored liquid nicotine products
154 to any other person. For the purposes of this subsection, the
155 term "flavored liquid nicotine product" means a liquid nicotine
156 product containing a natural or artificial constituent or
157 additive that causes the liquid or its vapor to have a
158 distinguishable taste or aroma other than tobacco or menthol,
159 including, but not limited to, fruit, chocolate, vanilla, honey,
160 candy, cocoa, a dessert, an alcoholic beverage, an herb or
161 spice, or any combination thereof.

162 (b) This subsection does not apply to the sale, shipment,
163 or transport of any product that receives a marketing order
164 issued by the United States Food and Drug Administration under
165 21 U.S.C. s. 387j.

166 Section 6. Section 569.101, Florida Statutes, is amended to
167 read:

168 569.101 Selling, delivering, bartering, furnishing, or
169 giving tobacco products to persons under 21 ~~18~~ years of age;
170 criminal penalties; defense.—

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

174 (2) Any person who violates subsection (1) commits a

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175 misdemeanor of the second degree, punishable as provided in s.
176 775.082 or s. 775.083. However, any person who violates
177 subsection (1) for a second or subsequent time within 1 year of
178 the first violation, commits a misdemeanor of the first degree,
179 punishable as provided in s. 775.082 or s. 775.083.

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

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

185 (b) The appearance of the buyer or recipient was such that
186 a prudent person would believe the buyer or recipient to be 21
187 ~~18~~ years of age or older; and

188 (c) Such person carefully checked a driver license or an
189 identification card issued by this state or another state of the
190 United States, a passport, or a United States armed services
191 identification card presented by the buyer or recipient and
192 acted in good faith and in reliance upon the representation and
193 appearance of the buyer or recipient in the belief that the
194 buyer or recipient was 21 ~~18~~ years of age or older.

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

199 Section 7. Section 569.11, Florida Statutes, is amended to
200 read:

201 569.11 Possession, misrepresenting age ~~or military service~~
202 to purchase, and purchase of tobacco products by persons under
203 21 ~~18~~ years of age prohibited; penalties; jurisdiction;

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204 disposition of fines.—

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

209 (a) For a first violation, 16 hours of community service
210 or, instead of community service, a \$25 fine. In addition, if
211 the person is under 18 years of age, the person must attend a
212 school-approved anti-vaping or anti-tobacco program, ~~if locally~~
213 ~~available;~~ or

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 (2) It is unlawful for any person under 21 ~~18~~ years of age
221 to misrepresent his or her age ~~or military service~~ for the
222 purpose of inducing a dealer or an agent or employee of the
223 dealer to sell, give, barter, furnish, or deliver any tobacco
224 product, or to purchase, or attempt to purchase, any tobacco
225 product from a person or a vending machine. Any person under 21
226 ~~18~~ years of age who violates this subsection commits a
227 noncriminal violation as provided in s. 775.08(3), punishable
228 by:

229 (a) For a first violation, 16 hours of community service
230 or, instead of community service, a \$25 fine and, in addition,
231 if the person is under 18 years of age, the person must attend a
232 school-approved anti-vaping or anti-tobacco program, ~~if~~

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233 ~~available~~; or

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

236
237 Any second or subsequent violation not within the 12-week period
238 after the first violation is punishable as provided for a first
239 violation.

240 (3) Any person under 21 ~~18~~ years of age cited for
241 committing a noncriminal violation under this section must sign
242 and accept a civil citation indicating a promise to appear
243 before the county court or comply with the requirement for
244 paying the fine and, if the person is under 18 years of age,
245 must attend a school-approved anti-vaping or anti-tobacco
246 program, ~~if locally available~~. If a fine is assessed for a
247 violation of this section, the fine must be paid within 30 days
248 after the date of the citation or, if a court appearance is
249 mandatory, within 30 days after the date of the hearing.

250 (4) A person charged with a noncriminal violation under
251 this section must appear before the county court or comply with
252 the requirement for paying the fine. The court, after a hearing,
253 shall make a determination as to whether the noncriminal
254 violation was committed. If the court finds the violation was
255 committed, it shall impose an appropriate penalty as specified
256 in subsection (1) or subsection (2). A person who participates
257 in community service shall be considered an employee of the
258 state for the purpose of chapter 440, for the duration of such
259 service.

260 (5) (a) If a person under 21 ~~18~~ years of age is found by the
261 court to have committed a noncriminal violation under this

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262 section and that person has failed to complete community
263 service, pay the fine as required by paragraph (1) (a) or
264 paragraph (2) (a), or, if the person is under 18 years of age,
265 attend a school-approved anti-vaping or anti-tobacco program,~~if~~
266 ~~locally available,~~ the court may direct the Department of
267 Highway Safety and Motor Vehicles to withhold issuance of or
268 suspend the driver license or driving privilege of that person
269 for a period of 30 consecutive days.

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

277 (6) Eighty percent of all civil penalties received by a
278 county court pursuant to this section shall be remitted by the
279 clerk of the court to the Department of Revenue for transfer to
280 the Department of Education to provide for teacher training and
281 for research and evaluation to reduce and prevent the use of
282 tobacco products by children. The remaining 20 percent of civil
283 penalties received by a county court pursuant to this section
284 shall remain with the clerk of the county court to cover
285 administrative costs.

286 Section 8. Section 877.112, Florida Statutes, is repealed.

287 Section 9. Paragraphs (a) and (b) of subsection (5) and
288 paragraphs (e) and (g) of subsection (8) of section 210.095,
289 Florida Statutes, are amended to read:

290 210.095 Mail order, Internet, and remote sales of tobacco

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291 products; age verification.—

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

295 (a) Include as part of the shipping documents, in a clear
296 and conspicuous manner, the following statement: "Tobacco
297 Products: Florida law prohibits shipping to individuals under 21
298 ~~18~~ years of age and requires the payment of all applicable
299 taxes."

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

302 1. The individual submitting the order for the delivery
303 sale or another adult who resides at the individual's address to
304 sign his or her name to accept delivery of the shipping
305 container. Proof of the legal minimum purchase age of the
306 individual accepting delivery is required only if the individual
307 appears to be under 30 ~~27~~ years of age.

308 2. Proof that the individual is either the addressee or the
309 adult designated by the addressee, in the form of a valid,
310 government-issued identification card bearing a photograph of
311 the individual who signs to accept delivery of the shipping
312 container.

313
314 If the person accepting a purchase order for a delivery sale
315 delivers the tobacco products without using a delivery service,
316 the person must comply with all of the requirements of this
317 section which apply to a delivery service. Any failure to comply
318 with a requirement of this section constitutes a violation
319 thereof.

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320 (8)

321 (e) A person who, in connection with a delivery sale,
322 delivers tobacco products on behalf of a delivery service to an
323 individual who is not an adult commits a misdemeanor of the
324 second ~~third~~ degree, punishable as provided in s. 775.082 or s.
325 775.083.

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

330 Section 10. Section 569.0075, Florida Statutes, is amended
331 to read:

332 569.0075 Gift of sample tobacco products prohibited.—The
333 gift of sample tobacco products to any person under the age of
334 21 ~~18~~ by an entity licensed or permitted under the provisions of
335 chapter 210 or this chapter, or by an employee of such entity,
336 is prohibited and is punishable as provided in s. 569.101.

337 Section 11. Subsection (1), paragraphs (b) and (c) of
338 subsection (2), and subsection (3) of section 569.008, Florida
339 Statutes, are amended to read:

340 569.008 Responsible retail tobacco products dealers;
341 qualifications; mitigation of disciplinary penalties; diligent
342 management and supervision; presumption.—

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

347 (2) To qualify as a responsible retail tobacco products
348 dealer, the dealer must establish and implement procedures

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349 designed to ensure that the dealer's employees comply with the
350 provisions of this chapter. The dealer must provide a training
351 program for the dealer's employees which addresses the use and
352 sale of tobacco products and which includes at least the
353 following topics:

354 (b) Methods of recognizing and handling customers under 21
355 ~~18~~ years of age.

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

359 (3) In determining penalties under s. 569.006, the division
360 may mitigate penalties imposed against a dealer because of an
361 employee's illegal sale of a tobacco product to a person under
362 21 ~~18~~ years of age if the following conditions are met:

363 (a) The dealer is qualified as a responsible dealer under
364 this section.

365 (b) The dealer provided the training program required under
366 subsection (2) to that employee before the illegal sale
367 occurred.

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

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

373 Section 12. Paragraph (b) of subsection (2), subsection
374 (3), and paragraph (g) of subsection (4) of section 569.12,
375 Florida Statutes, are amended to read:

376 569.12 Jurisdiction; tobacco product enforcement officers
377 or agents; enforcement.—

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378 (2)

379 (b) A tobacco product enforcement officer is authorized to
380 issue a citation to a person under the age of 21 ~~18~~ when, based
381 upon personal investigation, the officer has reasonable cause to
382 believe that the person has committed a civil infraction in
383 violation of s. 386.212 or s. 569.11.

384 (3) A correctional probation officer as defined in s.
385 943.10(3) is authorized to issue a citation to a person under
386 the age of 21 ~~18~~ when, based upon personal investigation, the
387 officer has reasonable cause to believe that the person has
388 committed a civil infraction in violation of s. 569.11.

389 (4) A citation issued to any person violating the
390 provisions of s. 569.11 shall be in a form prescribed by the
391 Division of Alcoholic Beverages and Tobacco of the Department of
392 Business and Professional Regulation and shall contain:

393 (g) The procedure for the person to follow in order to
394 contest the citation, perform the required community service,
395 attend the required anti-vaping or anti-tobacco program, or to
396 pay the civil penalty.

397 Section 13. Section 569.14, Florida Statutes, is amended to
398 read:

399 569.14 Posting of a sign stating that the sale of tobacco
400 products to persons under 21 ~~18~~ years of age is unlawful;
401 enforcement; penalty.—

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

405
406 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE

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407 OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS
408 REQUIRED FOR PURCHASE.

409
410 (2) ~~A dealer that sells tobacco products and nicotine~~
411 ~~products or nicotine dispensing devices, as defined in s.~~
412 ~~877.112, may use a sign that substantially states the following:~~

413
414 ~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR~~
415 ~~NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE~~
416 ~~OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED~~
417 ~~FOR PURCHASE.~~

418
419 ~~A dealer that uses a sign as described in this subsection meets~~
420 ~~the signage requirements of subsection (1) and s. 877.112.~~

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

424 (3) ~~(4)~~ Any dealer that sells tobacco products shall provide
425 at the checkout counter in a location clearly visible to the
426 dealer or the dealer's agent or employee instructional material
427 in a calendar format or similar format to assist in determining
428 whether a person is of legal age to purchase tobacco products.
429 This point of sale material must contain substantially the
430 following language:

431
432 IF YOU WERE NOT BORN BEFORE THIS DATE
433 (insert date and applicable year)
434 YOU CANNOT BUY TOBACCO PRODUCTS.

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

442 ~~(4)(5)~~ The division, through its agents and inspectors,
443 shall enforce this section.

444 ~~(5)(6)~~ Any person who fails to comply with subsection (1)
445 is guilty of a misdemeanor of the second degree, punishable as
446 provided in s. 775.082 or s. 775.083.

447 Section 14. Subsections (3) and (4) of section 569.19,
448 Florida Statutes, are amended to read:

449 569.19 Annual report.—The division shall report annually
450 with written findings to the Legislature and the Governor by
451 December 31, on the progress of implementing the enforcement
452 provisions of this chapter. This must include, but is not
453 limited to:

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

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

460 Section 15. This act shall take effect October 1, 2020, if
461 SB 1394 or similar legislation is adopted in the same
462 legislative session or an extension thereof and becomes a law.