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1
 2 An act relating to nicotine dispensing devices;
 3 amending s. 569.31, F.S.; defining and revising terms;
 4 creating s. 569.311, F.S.; providing legislative
 5 findings; authorizing the Attorney General to adopt
 6 rules for the creation of a directory listing nicotine
 7 dispensing devices for certain purposes; providing the
 8 Attorney General with factors that must be considered
 9 in determining which nicotine dispensing devices must
 10 be listed on such a directory; providing construction;
 11 providing that a determination by the Attorney General
 12 to include a nicotine dispensing device on the
 13 directory is subject to review under ch. 120, F.S.;
 14 providing applicability; requiring the Department of
 15 Legal Affairs to develop and maintain a directory of
 16 all nicotine products manufacturers that sell nicotine
 17 dispensing devices in this state which have been
 18 listed on the directory by the Attorney General;
 19 requiring the department to make the directory
 20 available for public inspection on its website by a
 21 certain date; providing retailers and wholesalers of a
 22 nicotine dispensing device that has been added to the
 23 directory a specified timeframe within which they may
 24 sell or remove the nicotine dispensing device from
 25 inventory; providing that such nicotine dispensing

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26 | devices are considered contraband after such specified
 27 | timeframe; providing that nicotine products
 28 | manufacturers that offer for sale in this state a
 29 | nicotine dispensing device listed on the directory are
 30 | subject to a fine for each day the nicotine dispensing
 31 | device is offered until it is either removed from the
 32 | market or is no longer listed on the directory;
 33 | providing retailers, distributors, and wholesalers a
 34 | specified timeframe in which to remove a nicotine
 35 | dispensing device from inventory after such device has
 36 | been listed; creating s. 569.312, F.S.; providing
 37 | criminal and civil penalties for a person who sells,
 38 | ships, or otherwise distributes a listed nicotine
 39 | dispensing device in this state for eventual retail
 40 | sale; providing that a violation of this section is an
 41 | unfair and deceptive trade practice; providing that
 42 | the Department of Legal Affairs is the sole
 43 | enforcement authority that may bring an action for an
 44 | unfair or deceptive trade practice under this section;
 45 | creating s. 569.345, F.S.; declaring nicotine
 46 | dispensing devices that violate ch. 569, F.S., as
 47 | contraband subject to seizure and confiscation by
 48 | certain persons under the Florida Contraband
 49 | Forfeiture Act; providing procedures for the seizure
 50 | and destruction of such nicotine dispensing devices;

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51 providing applicability; creating s. 569.346, F.S.;

52 requiring nonresident manufacturers of nicotine

53 dispensing devices to appoint an agent in this state

54 to accept service for any action or proceeding against

55 the manufacturer; providing that service upon the

56 agent constitutes service upon the manufacturer;

57 requiring such manufacturers to notify the department

58 of the termination and appointment of an agent within

59 a specified timeframe; providing that the Secretary of

60 State is deemed the agent for manufacturers that do

61 not appoint an agent as required by law; amending s.

62 569.41, F.S.; revising criminal penalties for those

63 who sell, deliver, barter, furnish, or give a nicotine

64 dispensing device, directly or indirectly, to persons

65 under 21 years of age; amending s. 569.002, F.S.;

66 conforming cross-references; providing an effective

67 date.

68

69 Be It Enacted by the Legislature of the State of Florida:

70

71 Section 1. Section 569.31, Florida Statutes, is amended to

72 read:

73 569.31 Definitions.—As used in this part, the term:

74 (1) "Dealer" is synonymous with the term "retail nicotine

75 products dealer."

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76 (2) "Division" means the Division of Alcoholic Beverages
 77 and Tobacco of the Department of Business and Professional
 78 Regulation.

79 (3) "FDA" means the United States Food and Drug
 80 Administration.

81 (4)~~(3)~~ "Nicotine dispensing device" means any product that
 82 employs an electronic, chemical, or mechanical means to produce
 83 vapor or aerosol from a nicotine product, including, but not
 84 limited to, an electronic cigarette, electronic cigar,
 85 electronic cigarillo, electronic pipe, or other similar device
 86 or product, any replacement cartridge for such device, and any
 87 other container of nicotine in a solution or other form intended
 88 to be used with or within an electronic cigarette, electronic
 89 cigar, electronic cigarillo, electronic pipe, or other similar
 90 device or product. For purposes of this definition, each
 91 individual stock keeping unit is considered a separate nicotine
 92 dispensing device.

93 (5)~~(4)~~ "Nicotine product" means any product that contains
 94 nicotine, including liquid nicotine, which is intended for human
 95 consumption, whether inhaled, chewed, absorbed, dissolved, or
 96 ingested by any means. The term also includes any nicotine
 97 dispensing device. The term does not include a:

98 (a) Tobacco product, as defined in s. 569.002;

99 (b) Product regulated as a drug or device by the United
 100 States Food and Drug Administration under Chapter V of the

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101 Federal Food, Drug, and Cosmetic Act; or
 102 (c) Product that contains incidental nicotine.
 103 (6) "Nicotine products manufacturer" means any person or
 104 entity that manufactures nicotine products.
 105 (7)-(5) "Permit" is synonymous with the term "retail
 106 nicotine products dealer permit."
 107 (8)-(6) "Retail nicotine products dealer" means the holder
 108 of a retail nicotine products dealer permit.
 109 (9)-(7) "Retail nicotine products dealer permit" means a
 110 permit issued by the division under s. 569.32.
 111 (10)-(8) "Self-service merchandising" means the open
 112 display of nicotine products, whether packaged or otherwise, for
 113 direct retail customer access and handling before purchase
 114 without the intervention or assistance of the dealer or the
 115 dealer's owner, employee, or agent. An open display of such
 116 products and devices includes the use of an open display unit.
 117 (11) "Sell" or "sale" means, in addition to its common
 118 usage meaning, any sale, transfer, exchange, barter, gift, or
 119 offer for sale and distribution, in any manner or by any means.
 120 Section 2. Section 569.311, Florida Statutes, is created
 121 to read:
 122 569.311 Control of nicotine dispensing devices; grant of
 123 authority to Attorney General to create a directory of nicotine
 124 products attractive to minors.-
 125 (1) The Legislature has determined that information,

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126 testings, approvals, or scientific evidence may, from time to
127 time, indicate that certain nicotine dispensing devices have a
128 greater potential to be attractive to and be abused by minors
129 than was evident when such devices were allowed on the market.
130 It is the intent of the Legislature to quickly provide a method
131 to allow the state to seek removal of such items from the
132 market.

133 (2) The Attorney General is hereby authorized to adopt
134 rules creating a directory listing nicotine dispensing devices
135 that are attractive to minors.

136 (3) A nicotine dispensing device is deemed attractive to
137 minors, and the Attorney General shall include it in the
138 directory, if the nicotine dispensing device has features that
139 are significantly appealing to minors as compared to the
140 legitimate benefits those features offer to lawful users of the
141 product. In applying this standard, the Attorney General and
142 reviewing courts shall consider the following:

143 (a) Surveys or other data sources indicating that a
144 nicotine dispensing device is being used by minors at a higher
145 rate than other nicotine dispensing devices.

146 (b) Complaints, reports, or other information related to
147 the use of a nicotine dispensing device by minors from other
148 minors, parents, teachers, school employees, school boards, law
149 enforcement officers, retailers, and other industry related
150 officials as compared to other nicotine dispensing devices.

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- 151 (c) The extent to which the nicotine dispensing device:
 152 1. Is designed to be attractive to minors, such as through
 153 the use of bright colors or cartoon characters.
 154 2. Is designed so that it is easy for minors to use and to
 155 conceal.
 156 3. Uses or resembles the trade dress of a branded food
 157 product, consumer food product, or logo of a food product.
 158 4. Is marketed in a manner that uniquely appeals to
 159 minors.
 160 5. Uses actual copyrights, service marks, or trademarks or
 161 fake or actual copyrights, service marks, or trademarks that
 162 resemble consumer or food products popular with minors,
 163 including the names of candy or cereal products.
 164 (d) Any reports of physical harm to minors from using the
 165 nicotine dispensing device or evidence that the nicotine
 166 dispensing device presents unique risks to minors.
 167 (e) Whether the manufacturer of the nicotine dispensing
 168 device submitted a timely filed premarket tobacco product
 169 application for the nicotine dispensing device pursuant to 21
 170 U.S.C. s. 387j.
 171 (4) In making the determination in subsection (3), the
 172 Attorney General shall consider a decision of the FDA regarding
 173 the nicotine dispensing device, if the decision is final and not
 174 subject to a stay, by a court or the agency, or subject to a
 175 timely petition for supervisory review, and the extent to which

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176 the FDA's decision was predicated, in whole or part, on the
177 risks to minors outweighing other benefits of the nicotine
178 dispensing device.

179 (5) Rulemaking under this section shall be in accordance
180 with the procedural requirements of chapter 120, including the
181 emergency rule provisions found in s. 120.54, except that s.
182 120.54(7) does not apply.

183 (6) A determination by the Attorney General under
184 subsections (2) and (3) to include a nicotine dispensing device
185 in the directory is subject to review under chapter 120.

186 (7) This section does not apply to a nicotine dispensing
187 device that has received a marketing granted order under 21
188 U.S.C. s. 387j.

189 (8) This section shall only apply to, and a nicotine
190 dispensing device shall only be subject to this section when, a
191 nicotine dispensing device is either a single-use or disposable
192 electronic cigarette, electronic cigar, electronic cigarillo,
193 electronic pipe, or other similar device that is intended to be
194 discarded after use, or an electronic cigarette, an electronic
195 cigar, an electronic cigarillo, an electronic pipe, or other
196 similar device that uses a sealed, prefilled, and disposable
197 cartridge of nicotine in a solution. This section does not apply
198 to an electronic cigarette, an electronic cigar, an electronic
199 cigarillo, an electronic pipe, or other similar device that is
200 an open system where a consumer fills a vial or other container

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201 with nicotine in a solution.

202 (9) The Department of Legal Affairs shall develop and
203 maintain a directory listing all nicotine product manufacturers
204 that sell nicotine dispensing devices in this state which the
205 Attorney General has deemed attractive to minors under
206 subsections (2) and (3). The department shall make the directory
207 available January 1, 2025, for public inspection on its website.
208 The department shall update the directory as necessary. The
209 department shall establish a process to provide retailers,
210 distributors, and wholesalers notice of the initial publication
211 of the directory and any changes made to the directory.

212 (10) If a nicotine dispensing device is added to the
213 directory, each retailer and each wholesaler holding nicotine
214 dispensing devices for eventual sale to a consumer in this state
215 has 60 days from the day such product is added to the directory
216 to sell the product or remove the product from its inventory.
217 After 60 days following the date a product is added to the
218 directory, the product identified in the directory is contraband
219 and subject to s. 569.345.

220 (11) (a) Except as provided in paragraphs (b) and (c),
221 beginning March 1, 2025, or on the date that the department
222 first makes the directory available for public inspection on its
223 website, whichever is later, a nicotine product manufacturer
224 that offers for sale in this state a nicotine dispensing device
225 listed on the directory is subject to a fine of \$1,000 per day

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226 for each individual nicotine dispensing device offered for sale
227 in violation of this section until the offending product is
228 removed from the market or until the offending product is no
229 longer listed on the directory.

230 (b) Each retailer shall have 60 days from the date that
231 the department first makes the directory available for public
232 inspection on its website to sell products that were in its
233 inventory before that date or remove those products from
234 inventory.

235 (c) Each distributor or wholesaler shall have 60 days from
236 the date that the department first makes the directory available
237 for public inspection on its website to remove from inventory
238 those products intended for eventual retail sale to a consumer
239 in this state.

240 Section 3. Section 569.312, Florida Statutes, is created
241 to read:

242 569.312 Shipment of nicotine dispensing devices sold for
243 retail sale in this state.-

244 (1) A nicotine product manufacturer, a retail nicotine
245 products dealer, a wholesaler, or a distributor may not sell,
246 ship, or otherwise distribute a nicotine dispensing device in
247 this state for eventual retail sale to a consumer in this state
248 that is listed on the directory.

249 (2) Any person who knowingly sells, ships or receives
250 nicotine dispensing devices in violation of this section commits

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251 a misdemeanor of the first degree, punishable as provided in s.
 252 775.082 or s. 775.083.

253 (3) A violation of this part is deemed an unfair and
 254 deceptive trade practice actionable under part II of chapter 501
 255 that can only be enforced by the Department of Legal Affairs. If
 256 the department has reason to believe that a person is in
 257 violation of this section, the department may, as the sole
 258 enforcement authority, bring an action against such person for
 259 an unfair or deceptive act or practice. For the purpose of
 260 bringing an action pursuant to this section, ss. 501.211 and
 261 501.212 do not apply. In addition to other remedies under part
 262 II of this chapter, the department may collect a civil penalty
 263 of up to \$1,000 per nicotine dispensing device sold, shipped, or
 264 otherwise distributed.

265 Section 4. Section 569.345, Florida Statutes, is created
 266 to read:

267 569.345 Seizure and destruction of contraband nicotine
 268 dispensing devices.—All nicotine dispensing devices sold,
 269 delivered, possessed, or distributed contrary to any provision
 270 of this chapter are declared to be contraband, are subject to
 271 seizure and confiscation under the Florida Contraband Forfeiture
 272 Act by any person whose duty it is to enforce this chapter, and
 273 must be disposed of as follows:

274 (1) A court having jurisdiction shall order such nicotine
 275 dispensing devices forfeited upon a showing that, by a

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276 preponderance of the evidence, such devices were sold,
277 delivered, possessed, or distributed contrary to any provision
278 of this chapter. Once any chapter 120 proceedings related to
279 such devices have been completed, the court shall order any
280 seized nicotine dispensing devices destroyed except as provided
281 by applicable court orders. A record of the place where such
282 devices were seized, the kinds and quantities of such devices
283 destroyed, and the time, place, and manner of the destruction of
284 such devices must be kept, and a return under oath reporting the
285 destruction must be made to the court by the officer who
286 destroys such devices.

287 (2) The Department of Legal Affairs shall keep a full and
288 complete record of all nicotine dispensing devices seized under
289 this section showing:

290 (a) The exact kinds, quantities, and forms of such
291 nicotine dispensing devices;

292 (b) The persons from whom such devices were seized and to
293 whom they were delivered;

294 (c) By whose authority such devices were seized,
295 delivered, and destroyed; and

296 (d) The dates of the seizure, disposal, or destruction of
297 such devices.

298
299 Such record must be open to inspection by all persons charged
300 with the enforcement of tobacco and nicotine product laws.

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301 (3) The cost of seizure, confiscation, and destruction of
 302 contraband nicotine dispensing devices is borne by the person
 303 from whom such products are seized.

304 (4) Except as otherwise provided in this section, the
 305 procedures of the Florida Contraband Forfeiture Act apply to
 306 this section.

307 Section 5. Section 569.346, Florida Statutes, is created
 308 to read:

309 569.346 Agent for service of process.—

310 (1) Any nonresident manufacturer of nicotine dispensing
 311 devices which has not registered to do business in this state as
 312 a foreign corporation or business entity shall appoint and
 313 continually engage without interruption the services of an agent
 314 in this state to act as agent for the service of process on whom
 315 all process, and any action or proceeding against it concerning
 316 or arising out of the enforcement of this chapter, may be served
 317 in any manner authorized by law. Such service constitutes legal
 318 and valid service of process on the manufacturer. The
 319 manufacturer shall provide the name, address, telephone number,
 320 and proof of the appointment and availability of such agent to
 321 the division.

322 (2) The manufacturer shall provide notice to the
 323 Department of Legal Affairs 30 calendar days before termination
 324 of the authority of an agent and shall further provide proof to
 325 the satisfaction of the department of the appointment of a new

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326 agent no less than 5 calendar days before the termination of an
 327 existing agent appointment. In the event an agent terminates an
 328 agency appointment, the manufacturer shall notify the department
 329 of the termination within 5 calendar days and shall include
 330 proof to the satisfaction of the department of the appointment
 331 of a new agent.

332 (3) Any manufacturer whose nicotine dispensing devices are
 333 sold in this state which has not appointed and engaged the
 334 services of an agent as required by this section shall be deemed
 335 to have appointed the Secretary of State as its agent for
 336 service of process.

337 Section 6. Subsection (2) of section 569.41, Florida
 338 Statutes, is amended to read:

339 569.41 Selling, delivering, bartering, furnishing, or
 340 giving nicotine products to persons under 21 years of age;
 341 criminal penalties; defense.—

342 (2) Any person who violates subsection (1) commits a
 343 misdemeanor of the second degree, punishable as provided in s.
 344 775.082 or s. 775.083. However, any person who violates
 345 subsection (1) for a second or subsequent time within 1 year
 346 after the first violation commits a misdemeanor of the first
 347 degree, punishable as provided in s. 775.082 or s. 775.083. Any
 348 person who violates subsection (1) for a third or subsequent
 349 time at any time after the first violation commits a felony of
 350 the third degree, punishable as provided in s. 775.082 or s.

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351 | 775.083.

352 | Section 7. Subsections (3) and (4) of section 569.002,
353 | Florida Statutes, are amended to read:

354 | 569.002 Definitions.—As used in this part, the term:

355 | (3) "Nicotine product" has the same meaning as ~~provided~~ in
356 | s. 569.31 ~~s. 569.31(4)~~.

357 | (4) "Nicotine dispensing device" has the same meaning as
358 | ~~provided~~ in s. 569.31 ~~s. 569.31(3)~~.

359 | Section 8. This act shall take effect October 1, 2024.