

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1588

INTRODUCER: Senator Gruters

SUBJECT: Heated Tobacco Products

DATE: January 19, 2024 REVISED: 1/21/2024

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 1588 exempts heated tobacco products from the taxes on cigarettes and other tobacco products in ch. 210, F.S.

The bill defines the term “heated tobacco product” to mean “a product containing tobacco which produces an inhalable aerosol by heating the tobacco without combustion of the tobacco or by the heat generated from a combustion source that only heats rather than burns the tobacco.”

The bill excludes heated tobacco products from the definition for the term “cigarette,” in the context of the taxation of tobacco products under part I of ch. 210, F.S., and from the definition for the term “tobacco products” in the context of the taxation of tobacco products other than cigarettes and cigars. By excluding heated tobacco products from the meaning of cigarettes and other tobacco products, the bill does not tax heated tobacco products as cigarettes or other tobacco products under ch. 210, F.S.

A tax and a surcharge are imposed each cigarette at different rates depending on the weight of the tobacco or the number of cigarettes in a carton. Under current law tobacco products other than cigarettes, e.g., products such as snuff or chewing tobacco, are taxed at the rate of 25 percent of the wholesale sales price. A surcharge tax is also imposed on those products at the rate of 60 percent of the wholesale sales price.

The bill renames part II of ch. 210, F.S., from “Tax on Tobacco Products other than Cigarettes or Cigars,” to “Tax on Tobacco Products other than Cigarettes, Heated Tobacco Products, or Cigars.”

The bill subjects heated tobacco products to the same delivery requirements that are applicable under current law to other tobacco products sold by mail order, the internet, or other remote sales, including age verification requirements.

The bill amends the definition for the term “tobacco product” in s. 569.002(8), F.S., relating to the regulation of retail tobacco permit dealers, to include heated tobacco products. Under the bill, persons who engage in the retail sale of heated tobacco products must have a retail tobacco products dealer permit issued by the Division of Alcoholic Beverages and Tobacco (division). Under current law, dealers of nicotine dispensing devices, including nicotine products, are required to have a retail nicotine products dealer permit issued by the division. Also under current law, nicotine dispensing devices, including nicotine products, are not subject to taxation as tobacco products under ch. 210, F.S.

The bill takes effect on July 1, 2024.

II. Present Situation:

Regulation of Tobacco Products and Nicotine Dispensing Devices

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

Tobacco Products Definitions

Section 210.01(1), F.S., defines the term “cigarette” to mean:

any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Section 569.002(6), F.S., defines the term “tobacco products” to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing, in the context of the taxation of cigarettes under part I of ch. 210, F.S.

Section 210.25(12), F.S., provides a separate definition for the term “tobacco products” in the context of the taxation of tobacco products other than cigarettes or cigars. It provides for the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context, the term “tobacco products” means:

loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of “tobacco products” in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Taxation of Tobacco Products Other than Cigarettes or Cigars

Part II of ch. 210, F.S., imposes a tax and a surcharge tax on tobacco products other than cigarettes or cigars. Cigarettes are taxed under part I of ch. 210, F.S. Cigars are not subject to a tax.

Section 210.30(1), F.S., imposes a tax on tobacco products other than cigarettes or cigars and upon any person engaged in business as a distributor of such tobacco products at the rate of 25 percent of the wholesale sales price. The tax is levied at the time the distributor:

- Brings or causes to be brought into Florida from without the state tobacco products for sale;
- Makes, manufactures, or fabricates tobacco products in Florida for sale in Florida; or
- Ships or transports tobacco products to retailers in Florida, to be sold by those retailers.

If the tax is not paid by the distributor, the tax is imposed upon the use or storage by consumers of such tobacco products in Florida and upon consumers at the rate of 25 percent of the cost of such tobacco products.

Section 210.276(1), F.S., imposes a surcharge tax on tobacco products other than cigarettes or cigars and upon any person engaged in business as a distributor of such tobacco products at the rate of 60 percent of the wholesale sales price. The surcharge is levied at the same time the tax in s. 210.30, is levied on the distributor.

The surcharge is not levied on tobacco products shipped or transported outside Florida for sale or use outside Florida.

Section 210.25(5), F.S., defines the term “distributor” to mean:

- Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;
- Any person who makes, manufactures, or fabricates tobacco products in this state for sale in Florida; or
- Any person engaged in the business of selling tobacco outside this state who ships or transports tobacco products to retailers in this state to be sold by those retailers.

Section 210.25(14), F.S., defines the term “wholesale sales price” to mean the sum of:

- The full price paid by the distributor to acquire the tobacco products, including charges by the seller for the cost of materials, the cost of labor and service, charges for transportation and delivery, the federal excise tax, and any other charge, even if the charge is listed as a separate item on the invoice paid by the distributor, exclusive of any diminution by volume or other discounts, including a discount provided to a distributor by an affiliate; and
- The federal excise tax paid by the distributor on the tobacco products if the tax is not included in the full price.

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.¹ The fee for an annual permit is established by the division in rule at an amount to cover the regulatory costs of the program, not to exceed \$50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.²

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, including age verification requirements. All such deliveries are defined as “delivery sales.”³

Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Tobacco Products: Florida law prohibits shipping to individuals who are not 21 years of age or older and requires the payment of all applicable taxes.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 30 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.⁴

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.⁵ Before making sales or shipping orders, entities must provide specific notice to the division as to shipper and receiver, with monthly reporting.⁶ There are requirements specific to purchase orders.⁷

¹ Section 569.003, F.S.

² Section 569.003(1)(c), F.S.

³ Section 210.095(1)(b), F.S.

⁴ Section 210.095(5), F.S.

⁵ *Id.*

⁶ Section 210.095(6), F.S.

⁷ Section 210.095(7), F.S.

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the second degree:⁸

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 21 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 21 years of age.

Section 210.15, F.S., requires a permit to every person, firm, or corporation desiring to engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes within Florida. To qualify for a permit, a person must be of good moral character and not less than 21 years of age to qualify. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 21 years of age.⁹

Nicotine Products

Section 569.31(3), F.S., defines the term “nicotine dispensing device” to mean: any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Section 569.31(4), F.S., defines the term “nicotine product” to mean: any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

- (a) Tobacco product, as defined in s. 569.002;
- (b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or
- (c) Product that contains incidental nicotine.

(Emphasis added.)

Nicotine products, including nicotine dispensing devices such as electronic cigarettes (also commonly known as “vapes”), may contain nicotine, which comes from tobacco, but they do not contain tobacco. It is a non-tobacco “e-liquid” that is heated and aerosolized for inhalation by the user of the device.¹⁰

⁸ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁹ Section 210.15(2)(b), F.S.

¹⁰ American Cancer Society, What Do We Know About E-cigarettes? at: <https://www.cancer.org/cancer/risk-prevention/tobacco/e-cigarettes-vaping/what-do-we-know-about-e-cigarettes.html> (last visited Jan. 17, 2024).

Retail Nicotine Products Dealer Permit

A retail nicotine products dealer permit from the division is required for each place of business where nicotine products are sold, including sales made through a vending machine.¹¹ There is no fee for the permit. A person must be 21 years of age to qualify for a retail nicotine products dealer permit.¹²

Heated Tobacco Products

Heated tobacco products heat a compressed stick or pod of tobacco and produce an inhalable vapor or aerosol. These products do not produce smoke because the tobacco is not burned or ignited.¹³ It is not clear that heated tobacco products are subject to taxation under ch. 210, F.S., as cigarettes or other tobacco products because the definitions for the terms cigarettes and tobacco products under ch. 210, F.S., do not appear to describe heated tobacco products, e.g., heated tobacco products are not smoked or chewed.

III. Effect of Proposed Changes:

The bill exempts heated tobacco products from the taxes on tobacco products in ch. 210, F.S.

The definition of the term “cigarette” in s. 210.01(1), F.S., is revised by the bill to provide that the term does not include heated tobacco products. By excluding heated tobacco products from the meaning of cigarettes, the bill does not tax heated tobacco products as cigarettes under part I of ch. 210, F.S.

The bill amends s. 210.25, F.S., to define the term “heated tobacco product” to mean “a product containing tobacco which produces an inhalable aerosol by heating the tobacco without combustion of the tobacco or by the heat generated from a combustion source that only heats rather than burns the tobacco.”

The bill revises the definition of the term “tobacco product” in s. 210.25, F.S., to exclude heated tobacco products. By excluding heated tobacco products from the meaning of tobacco products, the bill does not tax heated tobacco products as tobacco products under part II of ch. 210, F.S.

The bill also revises the definition of the term “tobacco product” in s. 210.095, F.S., to include heated tobacco products. By including heated tobacco products within the meaning of tobacco products in this provision, the bill applies the delivery sale requirements in this section to heated tobacco products.

The bill renames part II of ch. 210, F.S., from “Tax on Tobacco Products other than Cigarettes or Cigars,” to “Tax on Tobacco Products other than Cigarettes, Heated Tobacco Products, or Cigars.”

¹¹ Section 569.32, F.S.

¹² Section 569.32(2)(a), F.S.

¹³ Campaign for Tobacco Free Kids, *Heated Tobacco Products, Definition and Global Market*, available at: https://assets.tobaccofreekids.org/global/pdfs/en/HTP_definition_en.pdf (last visited Jan. 20, 2024).

The bill amends the definition for the term “cigarette” in s. 210.01(1), F.S., to provide that the term does not include heated tobacco products.

The bill amends the definition for the term “tobacco product” in s. 569.002(8), F.S., to include heated tobacco products as defined in s. 210.25, F.S. The bill also reenacts the definition for the term “nicotine product” in s. 569.31(4), F.S., to incorporate the revision in the bill to the definition of the term “tobacco product” in s. 569.002(8), F.S.

Under the bill, a person who engages in the retail sale of heated tobacco products must have a retail tobacco products dealer permit.

The bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill exempts heated tobacco products from the taxes and surcharge taxes in in parts I and II of ch. 210, F.S.

The bill requires retail dealers of heated tobacco products to obtain a retail tobacco dealer permit, which may cost not more than \$50 for the annual permit.

C. **Government Sector Impact:**

The Revenue Estimating Conference has not performed a fiscal impact assessment for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.01, 210.095, 210.25, 569.002, 951.22, and 569.31.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.