

By the Committee on Regulated Industries; and Senator Calatayud

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1 A bill to be entitled
2 An act relating to nonapproved disposable nicotine
3 dispensing devices; providing a short title;
4 reordering and amending s. 569.31, F.S.; defining the
5 term "nonapproved disposable device"; amending s.
6 569.33, F.S.; revising which permitholders that the
7 premises covered by the permit are subject to
8 inspection and search by the Division of Alcoholic
9 Beverages and Tobacco; revising the provision that,
10 upon being granted a permit, such permitholders also
11 consent to inspections by the Department of Law
12 Enforcement for specified violations; requiring the
13 division to inspect regularly the licensed premises of
14 dealers who sell nonapproved disposable devices;
15 amending s. 569.35, F.S.; revising penalties for
16 violations involving the unlawful sale of nonapproved
17 disposable devices; requiring that administrative
18 fines for certain violations be used by the division
19 for specified purposes; amending s. 569.37, F.S.;
20 prohibiting a dealer who sells nonapproved disposable
21 devices from advertising, promoting, or displaying for
22 sale such devices in certain locations; revising
23 applicability; providing restrictions on locations for
24 specified dealers of nicotine products; requiring
25 dealers to submit specified information to the
26 division; requiring certain dealers to maintain
27 specified records; authorizing the division to request
28 and have access to such records; providing that
29 failure of provide such records is a violation of this

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30 section; requiring dealers to provide specified
31 information within a certain time period following
32 such a request; requiring dealers to submit an
33 application to the division for conditional use or
34 legally recognized nonconforming use in specified
35 circumstances; requiring dealers to relocate following
36 approval of such applications within a specified
37 timeframe; amending s. 569.39, F.S.; revising the
38 division's rulemaking authority; amending s. 569.44,
39 F.S.; revising the information that must be included
40 in the division's annual report to the Legislature and
41 the Governor; reenacting ss. 569.381(3) and (5) and
42 569.43(3), F.S., relating to responsible retail
43 nicotine products dealers, qualifications, mitigation
44 of disciplinary penalties, diligent management and
45 supervision, and presumption; and posting of a sign
46 stating that the sale of nicotine products or nicotine
47 dispensing devices to persons under 21 years of age is
48 unlawful, enforcement, and penalties, respectively, to
49 incorporate the amendment made to s. 569.35, F.S., in
50 references thereto; providing an effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. This act may be cited as the "Florida Age Gate
55 Act."

56 Section 2. Section 569.31, Florida Statutes, is reordered
57 and amended to read:

58 569.31 Definitions.—As used in this part, the term:

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59 (2)~~(1)~~ "Dealer" is synonymous with the term "retail
60 nicotine products dealer."

61 (3)~~(2)~~ "Division" means the Division of Alcoholic Beverages
62 and Tobacco of the Department of Business and Professional
63 Regulation.

64 (4)~~(3)~~ "FDA" means the United States Food and Drug
65 Administration.

66 (5)~~(4)~~ "Nicotine dispensing device" means any product that
67 employs an electronic, chemical, or mechanical means to produce
68 vapor or aerosol from a nicotine product, including, but not
69 limited to, an electronic cigarette, electronic cigar,
70 electronic cigarillo, electronic pipe, or other similar device
71 or product, any replacement cartridge for such device, and any
72 other container of nicotine in a solution or other form intended
73 to be used with or within an electronic cigarette, electronic
74 cigar, electronic cigarillo, electronic pipe, or other similar
75 device or product. For purposes of this definition, each
76 individual stock keeping unit is considered a separate nicotine
77 dispensing device.

78 (6)~~(5)~~ "Nicotine product" means any product that contains
79 nicotine, including liquid nicotine, which is intended for human
80 consumption, whether inhaled, chewed, absorbed, dissolved, or
81 ingested by any means. The term also includes any nicotine
82 dispensing device. The term does not include a:

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

84 (b) Product regulated as a drug or device by the United
85 States Food and Drug Administration under Chapter V of the
86 Federal Food, Drug, and Cosmetic Act; or

87 (c) Product that contains incidental nicotine.

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88 ~~(7)~~~~(6)~~ "Nicotine products manufacturer" means any person or
89 entity that manufactures nicotine products.

90 ~~(9)~~~~(7)~~ "Permit" is synonymous with the term "retail
91 nicotine products dealer permit."

92 ~~(10)~~~~(8)~~ "Retail nicotine products dealer" means the holder
93 of a retail nicotine products dealer permit.

94 ~~(11)~~~~(9)~~ "Retail nicotine products dealer permit" means a
95 permit issued by the division under s. 569.32.

96 ~~(12)~~~~(10)~~ "Self-service merchandising" means the open
97 display of nicotine products, whether packaged or otherwise, for
98 direct retail customer access and handling before purchase
99 without the intervention or assistance of the dealer or the
100 dealer's owner, employee, or agent. An open display of such
101 products and devices includes the use of an open display unit.

102 ~~(13)~~~~(11)~~ "Sell" or "sale" means, in addition to its common
103 usage meaning, any sale, transfer, exchange, barter, gift, or
104 offer for sale and distribution, in any manner or by any means.

105 ~~(1)~~~~(12)~~ "Any person under the age of 21" does not include
106 any person under the age of 21 who:

107 (a) Is in the military reserve or on active duty in the
108 Armed Forces of the United States; or

109 (b) Is acting in his or her scope of lawful employment.

110 (8) "Nonapproved disposable device" means a disposable or
111 single-use nicotine dispensing device as defined in this section
112 which has not received a marketing granted order under 21 U.S.C.
113 s. 387j.

114 Section 3. Section 569.33, Florida Statutes, is amended to
115 read:

116 569.33 Consent to inspection and search without warrant.—

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117 (1) An applicant for a retail nicotine products dealer
118 permit or a retail tobacco products dealer permit issued under
119 s. 569.003, by accepting the permit when issued, agrees that the
120 place or premises covered by the permit is subject to inspection
121 and search without a search warrant by the division or its
122 authorized assistants, and by sheriffs, deputy sheriffs, or
123 police officers, to determine compliance with this part. An
124 applicant also consents to inspection and search without a
125 search warrant of the licensed premises by the Department of Law
126 Enforcement to determine compliance with this part relating to
127 the unlawful sale of nonapproved disposable devices or the
128 unlawful advertising, promotion, or display for sale of such
129 devices.

130 (2) The division shall conduct regular inspections of the
131 licensed premises of dealers who sell nonapproved disposable
132 devices to ensure compliance with this part.

133 Section 4. Section 569.35, Florida Statutes, is amended to
134 read:

135 569.35 Retail nicotine product dealers; administrative and
136 criminal penalties.—

137 (1) The division may suspend or revoke the permit of a
138 dealer, including the retail tobacco products dealer permit of a
139 retail tobacco products dealer as defined in s. 569.002(4), upon
140 sufficient cause appearing of the violation of any of the
141 provisions of this part, by a dealer, or by a dealer's agent or
142 employee.

143 (2) (a) Except as provided in paragraph (b), the division
144 may also assess and accept an administrative fine of up to
145 \$1,000 against a dealer for each violation. The division shall

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146 deposit all fines collected under this paragraph into the
147 General Revenue Fund as collected.

148 (b) The division may impose the following penalties for
149 each violation involving the unlawful advertising, promotion, or
150 display for sale of nonapproved disposable devices as provided
151 in s. 569.37(3):

152 1. For a first violation, an administrative fine of at
153 least \$500, but not more than \$1,000, and an order requiring
154 that corrective action be taken within 15 days to preclude a
155 recurrence;

156 2. For a second violation within 12 weeks after the first
157 violation, an administrative fine of \$1,000 and up to a 30-day
158 suspension of the dealer's retail nicotine products dealer
159 permit; or

160 3. For a third or subsequent violation within 12 weeks
161 after the first violation, an administrative fine of at least
162 \$2,500, but not more than \$5,000, and at least a 30-day
163 suspension or revocation of the dealer's nicotine products
164 dealer permit.

165
166 Any second or subsequent violation beyond the 12-week period
167 after the first violation is punishable as provided for a first
168 violation. The division shall deposit all fines collected under
169 this paragraph into the Professional Regulation Trust Fund.

170 (c) In addition to any administrative penalties authorized
171 under subparagraph (b)3., a dealer, or a dealer's agent or
172 employee, who commits a third or subsequent violation within 12
173 weeks after the first violation commits a misdemeanor of the
174 second degree, punishable as provided in s. 775.082 or s.

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175 775.083.

176 (3) An order imposing an administrative fine becomes
177 effective 15 days after the date of the order. The division may
178 suspend the imposition of a penalty against a dealer,
179 conditioned upon the dealer's compliance with terms the division
180 considers appropriate.

181 (4) Administrative fines collected under paragraph (2)(b)
182 shall be used by the division to do all of the following:

183 (a) Increase enforcement personnel.

184 (b) Fund compliance inspections and investigations.

185 (c) Develop and implement public awareness campaigns to
186 reduce nicotine use by persons under the age of 21.

187 Section 5. Present subsections (3) and (4) of section
188 569.37, Florida Statutes, are redesignated as subsections (4)
189 and (5), respectively, a new subsection (3) and subsection (6)
190 are added to that section, and present subsection (3) of that
191 section is amended, to read:

192 569.37 Sale or delivery of nicotine products;
193 restrictions.—

194 (3) A dealer who sells nonapproved disposable devices may
195 not:

196 (a) Advertise, promote, or display for sale such
197 nonapproved disposable devices in any location that is visible
198 to persons outside of the dealer's licensed premises.

199 (b) Advertise, promote, or display for sale such
200 nonapproved disposable devices within the dealer's licensed
201 premises in a manner visible to any person under the age of 21,
202 including, but not limited to, placement of the devices in an
203 open display unit located in an area visible to any person under

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204 the age of 21.

205 ~~(4)(3)~~ The provisions of Subsections (1), and (2), and (3)
206 do shall not apply to an establishment that prohibits persons
207 under 21 years of age on the licensed premises.

208 (6) (a) A dealer that derives more than 20 percent of its
209 gross monthly retail sales from the sale of nicotine products
210 may not be located within 500 feet of the real property that
211 comprises a public or private elementary school, middle school,
212 or secondary school. The required distance must be measured on a
213 straight line from the nearest property line of the retail shop
214 to the nearest property line of the school.

215 (b) Each dealer must submit to the division a survey
216 certified under chapter 472, performed at least 30 days before
217 the date of the submission of the application for a permit under
218 s. 569.32, containing a legal description of the boundaries of
219 the place or premises and any existing public or private
220 elementary school, middle school, or secondary school located
221 within 500 feet. The measurement scaled by the division governs
222 any measurement disputes.

223 (c) A dealer located within 500 feet of real property that
224 comprises a public or private elementary school, middle school,
225 or secondary school must maintain records verifying the gross
226 monthly retail sales from the sale of nicotine products during
227 the previous 6 months, as well as the percentage of such sales
228 that represents the retail sales of nicotine dispensing devices.
229 The division may request and have access to such records for the
230 purpose of enforcement. Within 14 days after such request, the
231 dealer must provide a summary sales report verifying its sales
232 for the period of time requested. Failure of the dealer to

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233 provide a sales report when requested by the division, or
234 failure of the dealer to adequately demonstrate that the
235 business establishment has sold less than the required
236 percentage of nicotine products and nicotine dispensing devices,
237 is a violation of this section.

238 (d) Within 90 days after the opening of a public or private
239 elementary school, middle school, or secondary school located
240 within 500 feet of an existing place of business or premises
241 that sells nicotine products or nicotine dispensing devices, as
242 determined under paragraph (a), the dealer must submit an
243 application to the division for conditional use or legally
244 recognized nonconforming use in accordance with the local
245 government's applicable land development regulations. Upon
246 approval of the division for conditional use or a legally
247 recognized nonconforming use, the dealer must relocate the
248 business or premises within 180 days, or upon expiration of the
249 dealer's current lease agreement without any extension thereof,
250 whichever occurs later, to a new location in compliance with
251 this subsection.

252 (e) Within 90 days after July 1, 2025, a dealer that has a
253 place of business or premises located within 500 feet of a
254 public or private elementary school, middle school, or secondary
255 school, as determined under paragraph (a), must submit an
256 application to the division for conditional use or legally
257 recognized nonconforming use in accordance with the local
258 government's land development regulations. Upon approval of the
259 division for conditional use or a legally recognized
260 nonconforming use, the dealer must relocate the business or
261 premises within 180 days, or upon expiration of the dealer's

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262 current lease agreement without any extension thereof, whichever
263 occurs later, to a new location in compliance with this
264 subsection.

265 Section 6. Section 569.39, Florida Statutes, is amended to
266 read:

267 569.39 Rulemaking authority.—The division shall adopt rules
268 to administer and enforce this part. The rules must include
269 guidelines for compliance audits and enforcement actions
270 pertaining to the sale, advertising, promotion, and display for
271 sale of nonapproved disposable devices.

272 Section 7. Present subsections (3) and (4) of section
273 569.44, Florida Statutes, are redesignated as subsections (4)
274 and (5), respectively, and a new subsection (3) is added to that
275 section, to read:

276 569.44 Annual report.—The division shall report annually
277 with written findings to the Legislature and the Governor by
278 December 31 on the progress of implementing the enforcement
279 provisions of this part. This must include, but is not limited
280 to:

281 (3) The number of violations for any advertising,
282 promotion, or display of nonapproved disposable devices
283 prohibited by s. 569.37(3).

284 Section 8. For the purpose of incorporating the amendment
285 made by this act to section 569.35, Florida Statutes, in
286 references thereto, subsections (3) and (5) of section 569.381,
287 Florida Statutes, are reenacted to read:

288 569.381 Responsible retail nicotine products dealers;
289 qualifications; mitigation of disciplinary penalties; diligent
290 management and supervision; presumption.—

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291 (3) In determining penalties under s. 569.35, the division
292 may mitigate penalties imposed against a dealer because of an
293 employee's illegal sale of a nicotine product to a person under
294 21 years of age if the following conditions are met:

295 (a) The dealer is qualified as a responsible dealer under
296 this section.

297 (b) The dealer provided the training program required under
298 subsection (2) to that employee before the illegal sale
299 occurred.

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

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

305 (5) Dealers shall exercise diligence in the management and
306 supervision of their premises and in the supervision and
307 training of their employees, agents, or servants. In proceedings
308 to impose penalties under s. 569.35, proof that employees,
309 agents, or servants of the dealer, while in the scope of their
310 employment, committed at least three violations of s. 569.41
311 during a 180-day period shall be prima facie evidence of a lack
312 of due diligence by the dealer in the management and supervision
313 of his or her premises and in the supervision and training of
314 employees, agents, officers, or servants.

315 Section 9. For the purpose of incorporating the amendment
316 made by this act to section 569.35, Florida Statutes, in a
317 reference thereto, subsection (3) of section 569.43, Florida
318 Statutes, is reenacted to read:

319 569.43 Posting of a sign stating that the sale of nicotine

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320 products or nicotine dispensing devices to persons under 21
321 years of age is unlawful; enforcement; penalty.-

322 (3) Any dealer that sells nicotine products shall provide
323 at the checkout counter in a location clearly visible to the
324 dealer or the dealer's agent or employee instructional material
325 in a calendar format or similar format to assist in determining
326 whether a person is of legal age to purchase nicotine products.
327 This point of sale material must contain substantially the
328 following language:

329

330 IF YOU WERE NOT BORN BEFORE THIS DATE
331 ... (insert date and applicable year) ...

332 YOU CANNOT BUY TOBACCO PRODUCTS,
333 NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

334

335 Upon approval by the division, in lieu of a calendar a dealer
336 may use card readers, scanners, or other electronic or automated
337 systems that can verify whether a person is of legal age to
338 purchase nicotine products. Failure to comply with the
339 provisions contained in this subsection shall result in
340 imposition of administrative penalties as provided in s. 569.35.

341 Section 10. This act shall take effect July 1, 2025.