

By Senator Calatayud

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1                                   A bill to be entitled  
2       An act relating to nicotine dispensing devices;  
3       creating a short title; reordering and amending s.  
4       569.31, F.S.; defining the term "non-FDA-authorized  
5       nicotine dispensing device"; amending s. 569.33, F.S.;  
6       requiring an applicant for a retail nicotine products  
7       dealer permit to consent to inspections and searches  
8       of the licensed premises by the Department of Law  
9       Enforcement for specified purposes; requiring the  
10      Division of Alcoholic Beverages and Tobacco of the  
11      Department of Business and Professional Regulation to  
12      conduct regular inspections of licensed premises of  
13      dealers that sell non-FDA-authorized nicotine  
14      dispensing devices to ensure compliance; amending s.  
15      569.35, F.S.; providing civil and criminal penalties  
16      for retail tobacco products dealers that advertise,  
17      promote, or display for sale non-FDA-authorized  
18      nicotine dispensing devices; requiring the department  
19      and the division to use the administrative fines  
20      assessed for specified purposes; conforming a cross-  
21      reference; reordering and amending s. 569.37, F.S.;  
22      prohibiting certain dealers that sell non-FDA-  
23      authorized nicotine dispensing devices from  
24      advertising, promoting, or displaying such devices if  
25      such dealers do not prohibit persons younger than 21  
26      years of age on the licensed premises; providing  
27      exemptions; conforming cross-references; amending s.  
28      569.39, F.S.; revising the rules to be adopted by the  
29      division; amending s. 569.44, F.S.; revising the

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30 requirements of the division's annual report to the  
31 Legislature and the Governor; providing an effective  
32 date.

33  
34 Be It Enacted by the Legislature of the State of Florida:

35  
36 Section 1. This act may be cited as the "Florida Age-Gate  
37 Act."

38 Section 2. Section 569.31, Florida Statutes, is reordered  
39 and amended to read:

40 569.31 Definitions.—As used in this part, the term:

41 (2)~~(1)~~ "Dealer" is synonymous with the term "retail  
42 nicotine products dealer."

43 (3)~~(2)~~ "Division" means the Division of Alcoholic Beverages  
44 and Tobacco of the Department of Business and Professional  
45 Regulation.

46 (4)~~(3)~~ "FDA" means the United States Food and Drug  
47 Administration.

48 (5)~~(4)~~ "Nicotine dispensing device" means any product that  
49 employs an electronic, chemical, or mechanical means to produce  
50 vapor or aerosol from a nicotine product, including, but not  
51 limited to, an electronic cigarette, electronic cigar,  
52 electronic cigarillo, electronic pipe, or other similar device  
53 or product, any replacement cartridge for such device, and any  
54 other container of nicotine in a solution or other form intended  
55 to be used with or within an electronic cigarette, electronic  
56 cigar, electronic cigarillo, electronic pipe, or other similar  
57 device or product. For purposes of this definition, each  
58 individual stock keeping unit is considered a separate nicotine

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59 dispensing device.

60 ~~(6)~~~~(5)~~ "Nicotine product" means any product that contains  
61 nicotine, including liquid nicotine, which is intended for human  
62 consumption, whether inhaled, chewed, absorbed, dissolved, or  
63 ingested by any means. The term also includes any nicotine  
64 dispensing device. The term does not include a:

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

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

69 (c) Product that contains incidental nicotine.

70 ~~(7)~~~~(6)~~ "Nicotine products manufacturer" means any person or  
71 entity that manufactures nicotine products.

72 (8) "Non-FDA-authorized nicotine dispensing device" means  
73 any nicotine dispensing device, including any single-use device,  
74 nonrefillable closed system cartridge device, or disposable  
75 device, which has not received a marketing authorization order  
76 under 21 U.S.C. s. 387j from the Food and Drug Administration.

77 ~~(9)~~~~(7)~~ "Permit" is synonymous with the term "retail  
78 nicotine products dealer permit."

79 ~~(10)~~~~(8)~~ "Retail nicotine products dealer" means the holder  
80 of a retail nicotine products dealer permit.

81 ~~(11)~~~~(9)~~ "Retail nicotine products dealer permit" means a  
82 permit issued by the division under s. 569.32.

83 ~~(12)~~~~(10)~~ "Self-service merchandising" means the open  
84 display of nicotine products, whether packaged or otherwise, for  
85 direct retail customer access and handling before purchase  
86 without the intervention or assistance of the dealer or the  
87 dealer's owner, employee, or agent. An open display of such

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88 products and devices includes the use of an open display unit.

89 ~~(13)~~~~(11)~~ "Sell" or "sale" means, in addition to its common  
90 usage meaning, any sale, transfer, exchange, barter, gift, or  
91 offer for sale and distribution, in any manner or by any means.

92 ~~(1)~~~~(12)~~ "Any person under the age of 21" does not include  
93 any person under the age of 21 who:

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

96 (b) Is acting within the scope of ~~in~~ his or her ~~scope of~~  
97 lawful employment.

98 Section 3. Section 569.33, Florida Statutes, is amended to  
99 read:

100 569.33 Consent to inspection and search without warrant.—

101 (1) An applicant for a retail nicotine products dealer  
102 permit, by accepting the permit when issued, agrees that the  
103 place or premises covered by the permit is subject to inspection  
104 and search without a search warrant by the division or its  
105 authorized assistants, and by sheriffs, deputy sheriffs, or  
106 police officers, to determine compliance with this part.

107 (2) In addition to subsection (1), an applicant consents to  
108 inspection and search without a search warrant of the licensed  
109 premises by the Department of Law Enforcement for violations  
110 involving the unlawful sale, advertising, promotion, or display  
111 for sale of non-FDA-authorized nicotine dispensing devices as  
112 defined in s. 569.31.

113 (3) The division shall conduct regular inspections of the  
114 licensed premises of dealers that sell non-FDA-authorized  
115 nicotine dispensing devices to ensure compliance with this part.

116 Section 4. Section 569.35, Florida Statutes, is amended to

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117 read:

118 569.35 Retail nicotine product dealers; administrative  
119 penalties.—

120 (1) The division may suspend or revoke the permit of a  
121 dealer, including the retail tobacco products dealer permit of a  
122 retail tobacco products dealer as defined in s. 569.002 ~~s.~~  
123 ~~569.002(4)~~, upon sufficient cause appearing of the violation of  
124 any of the provisions of this part, by a dealer, or by a  
125 dealer's agent or employee.

126 (2) (a) The division may also assess and accept an  
127 administrative fine of up to \$1,000 against a dealer for each  
128 violation. The division shall deposit all fines collected into  
129 the General Revenue Fund as collected.

130 (b) For each violation involving the sale of a non-FDA-  
131 authorized nicotine dispensing device, or the advertising,  
132 promoting, or displaying for sale of such device, the division  
133 may impose the following penalties:

134 1. For a first violation, an administrative fine between  
135 \$500 to \$1,000 and an order requiring corrective action within  
136 15 days.

137 2. For a second violation, an administrative fine between  
138 \$1,000 to \$2,500 and an order requiring corrective action within  
139 3 days.

140 3. For a third violation, an administrative fine between  
141 \$2,500 to \$5,000 and suspension of the dealer's permit for 30  
142 days.

143 4. For a fourth violation, an administrative fine of no  
144 less than \$5,000 and suspension of the dealer's permit for 90  
145 days.

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146 5. For a fifth or subsequent violation, revocation of the  
147 dealer's permit.

148 (3) In addition to any administrative penalties under  
149 subparagraph (b)3., a dealer, or a dealer's agent or employee,  
150 who commits a third or subsequent violation within 12 weeks  
151 after the first violation commits a misdemeanor of the second  
152 degree, punishable as provided in s. 775.082 or s. 775.083.

153 (4) An order imposing an administrative fine becomes  
154 effective 15 days after the date of the order. The division may  
155 suspend the imposition of a penalty against a dealer,  
156 conditioned upon the dealer's compliance with terms the division  
157 considers appropriate.

158 (5) The division and the Department of Law Enforcement  
159 shall use the administrative fines assessed pursuant to  
160 subsection (2) to:

161 (a) Increase enforcement personnel;

162 (b) Fund compliance inspections and investigations; and

163 (c) Develop and implement public awareness campaigns to  
164 reduce nicotine use by persons younger than 21 years of age.

165 Section 5. Section 569.37, Florida Statutes, is reordered  
166 and amended to read:

167 569.37 Sale or delivery of nicotine products; restrictions;  
168 exemptions.—

169 (1) In order to prevent persons younger than ~~under~~ 21 years  
170 of age from purchasing or receiving nicotine products, the sale  
171 or delivery of nicotine products is prohibited, except:

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

174 (b) Sales from a vending machine are prohibited under

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175 paragraph (a) and are only permissible from a machine that is  
176 equipped with an operational lockout device that is under the  
177 control of the dealer or the dealer's agent or employee who  
178 directly regulates the sale of items through the machine by  
179 triggering the lockout device to allow the dispensing of one  
180 nicotine product. The lockout device must include a mechanism to  
181 prevent the machine from functioning if the power source for the  
182 lockout device fails or if the lockout device is disabled and a  
183 mechanism to ensure that only one nicotine product is dispensed  
184 at a time.

185 (2) (a) A dealer that sells nicotine products may not sell,  
186 permit to be sold, offer for sale, or display for sale such  
187 products or devices by means of self-service merchandising.

188 (b) A dealer that sells nicotine products may not place  
189 such products or devices in an open display unit unless the unit  
190 is located in an area that is inaccessible to customers.

191 ~~(6) (3) The provisions of Subsections (1), (2), and (3) do~~  
192 ~~not~~ ~~(2) shall not~~ apply to an establishment that prohibits  
193 persons younger than ~~under~~ 21 years of age on the licensed  
194 premises.

195 (4) A dealer or a dealer's agent or employee shall ~~must~~  
196 require proof of age of a purchaser of a nicotine product before  
197 selling the product to that person, unless the purchaser appears  
198 to be 30 years of age or older.

199 (5) (a) Notwithstanding this part, products manufactured by  
200 a company that has received at least one marketing authorization  
201 order under 21 U.S.C. s. 387j are not restricted under this  
202 section, provided such products are sold exclusively in  
203 compliance with the related age restrictions of this state.

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204 (b) For purposes of this section, the exemption extends to  
205 all:

206 1. Stock-keeping units marketed by such manufacturer under  
207 the same brand family as the authorized product; and

208 2. Closed-system, replaceable-cartridge devices designed  
209 exclusively for use with a proprietary, reusable, rechargeable  
210 device for which a marketing authorization order has been  
211 granted.

212 (3) (a) A dealer that allows persons younger than 21 years  
213 of age on the licensed premises, and that sells a non-FDA-  
214 authorized nicotine dispensing device, may not advertise,  
215 promote, or display for sale such devices in a manner that is  
216 visible to:

217 1. Any person outside the licensed premises; or

218 2. Any person younger than 21 years of age who is inside  
219 the licensed premises, including any open display unit.

220 (b) A dealer that prohibits persons younger than 21 years  
221 of age on the licensed premises, and that sells a nicotine  
222 dispensing device that has received a marketing authorization  
223 order under 21 U.S.C. s. 387j, may advertise, promote, or  
224 display for sale such devices in areas visible inside or outside  
225 the licensed premises.

226 (c) Notwithstanding paragraph (a), products manufactured by  
227 a company with at least one FDA marketing authorization order  
228 issued under 21 U.S.C. s. 387j are not restricted under this  
229 subsection, provided such products are sold exclusively in  
230 compliance with state age restrictions requirements. For  
231 purposes of this paragraph, the exemption also applies to all:

232 1. Stock-keeping units within the same brand family as the

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233 authorized product; and

234 2. Closed-system, replaceable-cartridge devices designed  
235 exclusively for use with a proprietary, reusable, rechargeable  
236 device for which a marketing authorization order has been  
237 granted.

238 Section 6. Section 569.39, Florida Statutes, is amended to  
239 read:

240 569.39 Rulemaking authority.—The division shall adopt rules  
241 to administer and enforce this part. The rules must include  
242 guidelines for compliance audits and enforcement actions  
243 pertaining to the advertising, promoting, or displaying for sale  
244 of any non-FDA-authorized nicotine dispensing devices and must  
245 expressly authorize establishments that prohibit persons younger  
246 than 21 years of age on the licensed premises to sell single-use  
247 nicotine dispensing devices that have not received a marketing  
248 authorization order issued under 21 U.S.C. s. 387j, consistent  
249 with s. 569.37(5).

250 Section 7. Present subsection (3) of section 569.44,  
251 Florida Statutes, is redesignated as subsection (4) and amended,  
252 and a new subsection (3) is added to that section, to read:

253 569.44 Annual report.—The division shall report annually  
254 with written findings to the Legislature and the Governor by  
255 December 31 on the progress of implementing the enforcement  
256 provisions of this part. This must include, but is not limited  
257 to:

258 (3) The number of dealers cited for violations of s.  
259 569.37(3) for advertising, promoting, or displaying for sale a  
260 non-FDA-authorized nicotine dispensing device, and the penalties  
261 imposed.

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262            (4)~~(3)~~ The number of violations for selling nicotine  
263 products to persons younger than ~~under age~~ 21 years of age and  
264 the results of administrative hearings on the above and related  
265 issues.

266            Section 8. This act shall take effect July 1, 2026.