

1                                   A bill to be entitled  
2           An act relating to nicotine products; revising the  
3           title of ch. 569, F.S.; creating part I of ch. 569,  
4           F.S.; creating part II of ch. 569, F.S.; amending s.  
5           569.002, F.S.; providing definitions for nicotine  
6           products and nicotine dispensing devices; amending s.  
7           569.004, F.S.; amending consent to inspection and  
8           search; amending s. 569.006, F.S.; amending penalties;  
9           amending s. 569.0073, F.S.; amending requirements to  
10          sell certain items at retail; amending s. 569.009,  
11          F.S.; revising a reference; amending s. 569.12, F.S.;  
12          amending authority of tobacco product enforcement  
13          officers; amending s. 569.14, F.S.; revising  
14          references; amending s. 569.19; revising a reference;  
15          creating s. 569.30, F.S.; creating definitions;  
16          creating s. 569.31, F.S.; requiring retailers of  
17          nicotine products to have a permit; providing  
18          requirements for the permit; creating s. 569.32, F.S.;  
19          creating consent to inspection and search; creating s.  
20          569.33, F.S.; creating penalty for operating without a  
21          permit; creating an exemption; creating s. 569.34,  
22          F.S.; providing administrative penalties; creating s.  
23          569.37, F.S.; creating restrictions of the sale or  
24          delivery of nicotine products; creating s. 569.38,  
25          F.S., prohibiting giving nicotine product samples to

26 certain persons; creating s. 569.381, F.S.; creating  
 27 mitigation of disciplinary penalties; creating s.  
 28 569.39, F.S.; providing rulemaking authority; creating  
 29 s. 569.40, F.S.; creating criminal penalties for  
 30 providing nicotine products to certain persons;  
 31 creating s. 569.41, F.S.; creating civil penalties for  
 32 possession or use of nicotine products by certain  
 33 person; creating s. 569.42, F.S.; creating signage  
 34 requirements; creating s. 569.43, F.S.; requiring an  
 35 annual report; creating s. 569.45, F.S.; providing  
 36 requirements for remote sales of nicotine products;  
 37 creating a criminal penalty for knowingly violating  
 38 the requirements; amending s. 768.73, F.S.; amending  
 39 punitive damages; repealing s. 877.112, F.S.;

40 providing an effective date.

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

Section 1. Chapter 569, entitled "Tobacco Products," is retitled "Tobacco and Nicotine Products."

Section 2. The Division of Law Revision is directed to create part I of chapter 569, Florida Statutes, consisting of ss. 569.002-569.23, Florida Statutes, to be entitled "Tobacco Products."

Section 3. The Division of Law Revision is directed to

51 create part II of chapter 569, Florida Statutes, consisting of  
52 ss. 569.30-569.45, Florida Statutes, to be entitled "Nicotine  
53 Products."

54 Section 4. Subsections (3), (4), (5), (6), and (7) of  
55 section 569.002, Florida Statutes, are amended to read:

56 569.002 Definitions.—As used in this part ~~chapter~~, the  
57 term:

58 (3) "Nicotine product" has the same meaning as provided in  
59 s. 569.30.

60 (4) "Nicotine dispensing device" has the same meaning as  
61 provided in s. 569.30

62 (5)~~(3)~~ "Permit" is synonymous with the term "retail  
63 tobacco products dealer permit."

64 (6)~~(4)~~ "Retail tobacco products dealer" means the holder  
65 of a retail tobacco products dealer permit.

66 (7)~~(5)~~ "Retail tobacco products dealer permit" means a  
67 permit issued by the division pursuant to s. 569.003.

68 (8)~~(6)~~ "Tobacco products" includes loose tobacco leaves,  
69 and products made from tobacco leaves, in whole or in part, and  
70 cigarette wrappers, which can be used for smoking, sniffing, or  
71 chewing.

72 (9)~~(7)~~ "Any person under the age of 18" does not include  
73 any person under the age of 18 who:

74 (a) Has had his or her disability of nonage removed under  
75 chapter 743;

76 (b) Is in the military reserve or on active duty in the  
 77 Armed Forces of the United States;

78 (c) Is otherwise emancipated by a court of competent  
 79 jurisdiction and released from parental care and responsibility;  
 80 or

81 (d) Is acting in his or her scope of lawful employment  
 82 with an entity licensed under the provisions of chapter 210 or  
 83 this chapter.

84 Section 5. Section 569.004, Florida Statutes, is amended  
 85 to read:

86 569.004 Consent to inspection and search without warrant.—  
 87 An applicant for a permit, by accepting the permit when issued,  
 88 agrees that the place or premises covered by the permit is  
 89 subject to inspection and search without a search warrant by the  
 90 division or its authorized assistants, and by sheriffs, deputy  
 91 sheriffs, or police officers, to determine compliance with this  
 92 chapter, including part II of this chapter if the applicant  
 93 deals, at retail, nicotine products within this state or allows  
 94 a nicotine products vending machine to be located on its  
 95 premises within this state.

96 Section 6. Section 569.006, Florida Statutes, is amended  
 97 to read:

98 569.006 Retail tobacco products dealers; administrative  
 99 penalties.—The division may suspend or revoke the permit of the  
 100 dealer upon sufficient cause appearing of the violation of any

101 of the provisions of this chapter, including part II of this  
102 chapter if the dealer deals, at retail, nicotine products within  
103 this state or allows a nicotine products vending machine to be  
104 located on its premises within this state, by a dealer or by a  
105 dealer's agent or employee. The division may also assess and  
106 accept administrative fines of up to \$1,000 against a dealer for  
107 each violation. The division shall deposit all fines collected  
108 into the General Revenue Fund as collected. An order imposing an  
109 administrative fine becomes effective 15 days after the date of  
110 the order. The division may suspend the imposition of a penalty  
111 against a dealer, conditioned upon the dealer's compliance with  
112 terms the division considers appropriate.

113 Section 7. Subsection (1) of section 569.0073, Florida  
114 Statutes, is amended to read:

115 569.0073 Special provisions; smoking pipes and smoking  
116 devices.—

117 (1) It is unlawful for any person to offer for sale at  
118 retail any of the items listed in subsection (2) unless such  
119 person:

120 (a) Has a retail tobacco products dealer permit under s.  
121 569.003. The provisions of this chapter apply to any person that  
122 offers for retail sale any of the items listed in subsection  
123 (2); and

124 (b)1. Derives at least 75 percent of its annual gross  
125 revenues from the retail sale of cigarettes, cigars, ~~and~~ other

126 tobacco products, or nicotine products; or

127 2. Derives no more than 25 percent of its annual gross  
 128 revenues from the retail sale of the items listed in subsection  
 129 (2).

130 Section 8. Section 569.009, Florida Statutes, is amended  
 131 to read:

132 569.009 Rulemaking authority.—The division shall adopt any  
 133 rules necessary to administer and enforce the provisions of this  
 134 part ~~chapter~~.

135 Section 9. Section 569.12, Florida Statutes, is amended to  
 136 read:

137 569.12 Jurisdiction; tobacco product enforcement officers  
 138 or agents; enforcement.—

139 (1) In addition to the Division of Alcoholic Beverages and  
 140 Tobacco of the Department of Business and Professional  
 141 Regulation, any law enforcement officer certified under s.  
 142 943.10(1), (6), or (8) shall enforce the provisions of this  
 143 chapter.

144 (2) (a) A county or municipality may designate certain of  
 145 its employees or agents as tobacco product and nicotine product  
 146 enforcement officers. The training and qualifications of the  
 147 employees or agents for such designation shall be determined by  
 148 the county or the municipality. Nothing in this section shall be  
 149 construed to permit the carrying of firearms or other weapons by  
 150 a tobacco product and nicotine product enforcement agent, nor

151 does designation as a tobacco product and nicotine product  
 152 enforcement officer provide the employee or agent with the power  
 153 of arrest or subject the employee or agent to the provisions of  
 154 ss. 943.085-943.255. Nothing in this section amends, alters, or  
 155 contravenes the provisions of any state-administered retirement  
 156 system or any state-supported retirement system established by  
 157 general law.

158 (b) An ~~A tobacco product~~ enforcement officer is authorized  
 159 to issue a citation to a person under the age of 18 when, based  
 160 upon personal investigation, the officer has reasonable cause to  
 161 believe that the person has committed a civil infraction in  
 162 violation of s. 386.212, ~~or~~ s. 569.11, or s. 569.41.

163 (3) A correctional probation officer as defined in s.  
 164 943.10(3) is authorized to issue a citation to a person under  
 165 the age of 18 when, based upon personal investigation, the  
 166 officer has reasonable cause to believe that the person has  
 167 committed a civil infraction in violation of s. 569.11 or s.  
 168 569.41.

169 (4) A citation issued to any person violating the  
 170 provisions of s. 569.11 or s.569.41 shall be in a form  
 171 prescribed by the Division of Alcoholic Beverages and Tobacco of  
 172 the Department of Business and Professional Regulation and shall  
 173 contain:

- 174 (a) The date and time of issuance.
- 175 (b) The name and address of the person to whom the

176 citation is issued.

177 (c) The date and time the civil infraction was committed.

178 (d) The facts constituting reasonable cause.

179 (e) The number of the Florida statute violated.

180 (f) The name and authority of the citing officer.

181 (g) The procedure for the person to follow in order to  
 182 contest the citation, perform the required community service,  
 183 attend the required anti-tobacco or anti-tobacco and anti-  
 184 nicotine program, or to pay the civil penalty.

185 Section 10. Subsections (2) and (4) of section 569.14,  
 186 Florida Statutes, are amended to read:

187 569.14 Posting of a sign stating that the sale of tobacco  
 188 products to persons under 18 years of age is unlawful;  
 189 enforcement; penalty.—

190 (2) A dealer that sells tobacco products and nicotine  
 191 products ~~or nicotine dispensing devices, as defined in s.~~  
 192 ~~877.112,~~ may use a sign that substantially states the following:

193 THE SALE OF TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, ~~OR NICOTINE~~  
 194 ~~DISPENSING DEVICES~~ TO PERSONS UNDER THE AGE OF 18 IS AGAINST  
 195 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

196 A dealer that uses a sign as described in this subsection meets  
 197 the signage requirements of subsection (1) and s. 569.42(1) ~~s.~~  
 198 ~~877.112.~~

199 (4) Any dealer that sells tobacco products shall provide

200 at the checkout counter in a location clearly visible to the  
 201 dealer or the dealer's agent or employee instructional material  
 202 in a calendar format or similar format to assist in determining  
 203 whether a person is of legal age to purchase tobacco products.  
 204 This point of sale material must contain substantially the  
 205 following language:

206 IF YOU WERE NOT BORN BEFORE THIS DATE

207 (insert date and applicable year)

208 YOU CANNOT BUY TOBACCO PRODUCTS OR NICOTINE PRODUCTS.

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

215 Section 11. Subsection (1) of section 569.19, Florida  
 216 Statutes, is amended to read:

217 569.19 Annual report.—The division shall report annually  
 218 with written findings to the Legislature and the Governor by  
 219 December 31, on the progress of implementing the enforcement  
 220 provisions of this part ~~chapter~~. This must include, but is not  
 221 limited to:

- 222 (1) The number and results of compliance visits.

223 Section 12. Section 569.30, Florida Statutes, is created

224 to read:

225 569.30 Definitions.—As used in this part, the term:

226 (1) "Dealer" is synonymous with the term "retail nicotine  
227 products dealer."

228 (2) "Division" means the Division of Alcoholic Beverages  
229 and Tobacco of the Department of Business and Professional  
230 Regulation.

231 (3) "Permit" is synonymous with the term "retail nicotine  
232 products dealer permit."

233 (4) "Retail nicotine products dealer" means the holder of a  
234 retail nicotine products dealer permit.

235 (5) "Retail nicotine products dealer permit" means a permit  
236 issued by the division pursuant to s. 569.31.

237 (6) "Nicotine dispensing device" means any product that  
238 employs an electronic, chemical, or mechanical means to produce  
239 vapor or aerosol from a nicotine product, including, but not  
240 limited to, an electronic cigarette, electronic cigar,  
241 electronic cigarillo, electronic pipe, or other similar device  
242 or product, any replacement cartridge for such device, and any  
243 other container of nicotine in a solution or other form intended  
244 to be used with or within an electronic cigarette, electronic  
245 cigar, electronic cigarillo, electronic pipe, or other similar  
246 device or product.

247 (7) "Nicotine product" means any product that contains  
248 nicotine, including liquid nicotine, that is intended for human

249 consumption, whether inhaled, chewed, absorbed, dissolved, or  
250 ingested by any means. The term also includes any "nicotine  
251 dispensing device." The term does not include a:

252 1. Tobacco product, as defined in s. 569.002;

253 2. Product regulated as a drug or device by the United  
254 States Food and Drug Administration under Chapter V of the  
255 federal Food, Drug, and Cosmetic Act; or

256 3. Product that contains incidental nicotine.

257 (8) "Self-service merchandising" means the open display of  
258 nicotine products, whether packaged or otherwise, for direct  
259 retail customer access and handling before purchase without the  
260 intervention or assistance of the retailer or the retailer's  
261 owner, employee, or agent. An open display of such products and  
262 devices includes the use of an open display unit.

263 (9) "Any person under the age of 18" does not include any  
264 person under the age of 18 who:

265 (a) Has had his or her disability of nonage removed under  
266 chapter 743;

267 (b) Is in the military reserve or on active duty in the  
268 Armed Forces of the United States;

269 (c) Is otherwise emancipated by a court of competent  
270 jurisdiction and released from parental care and responsibility;  
271 or

272 (d) Is acting in his or her scope of lawful employment.

273 Section 13. Section 569.31, Florida Statutes, is created

274 to read:

275 569.31 Retail nicotine products dealer permits;  
 276 application; qualifications; renewal; duplicates.-

277 (1) (a) Each person, firm, association, or corporation that  
 278 seeks to deal, at retail, in nicotine products within this  
 279 state, or to allow a nicotine products vending machine to be  
 280 located on its premises in this state, must obtain a retail  
 281 nicotine products dealer permit for each place of business or  
 282 the premises where nicotine products are sold. Each retail  
 283 dealer owning, leasing, furnishing, or operating vending  
 284 machines through which nicotine products are sold must obtain a  
 285 retail nicotine products dealer permit for each machine and  
 286 shall post the permit in a conspicuous place on or near the  
 287 machine; however, if the dealer has more than one vending  
 288 machine at a single location or if nicotine products are sold  
 289 both over the counter and through a vending machine at a single  
 290 location, the dealer need obtain only one permit for that  
 291 location.

292 (b) Application for a retail nicotine products dealer  
 293 permit must be made on a form furnished by the division and must  
 294 set forth the name under which the applicant transacts or  
 295 intends to transact business, the address of the location of the  
 296 applicant's place of business within the state, and any other  
 297 information the division requires. If the applicant has or  
 298 intends to have more than one place of business dealing in

299 nicotine products within this state, a separate application must  
300 be made for each place of business. If the applicant is a firm  
301 or an association, the application must set forth the names and  
302 addresses of the persons constituting the firm or association;  
303 if the applicant is a corporation, the application must set  
304 forth the names and addresses of the principal officers of the  
305 corporation. The application must also set forth any other  
306 information prescribed by the division for the purpose of  
307 identifying the applicant firm, association, or corporation. The  
308 application must be signed and verified by oath or affirmation  
309 by the owner, if a sole proprietor, or, if the owner is a firm,  
310 association, or partnership, by the members or partners thereof,  
311 or, if the owner is a corporation, by an executive officer of  
312 the corporation or by any person authorized by the corporation  
313 to sign the application, together with the written evidence of  
314 this authority.

315 (2) (a) Permits may be issued only to persons who are 18  
316 years of age or older or to corporations the officers of which  
317 are 18 years of age or older.

318 (b) The division may refuse to issue a permit to any  
319 person, firm, association, or corporation the permit of which  
320 has been revoked, to any corporation an officer of which has had  
321 his or her permit revoked, or to any person who is or has been  
322 an officer of a corporation the permit of which has been  
323 revoked. Any permit issued to a firm, association, or

324 corporation prohibited from obtaining a permit under this  
 325 chapter shall be revoked by the division.

326 (3) Upon approval of an application for a permit, the  
 327 division shall issue to the applicant a permit for the place of  
 328 business or premises specified in the application. A permit is  
 329 not assignable and is valid only for the person in whose name  
 330 the permit is issued and for the place designated in the permit.  
 331 The permit shall be conspicuously displayed at all times at the  
 332 place for which issued.

333 Section 14. Section 569.32, Florida Statutes, is created  
 334 to read:

335 569.32 Consent to inspection and search without warrant.-  
 336 An applicant for a permit, by accepting the permit when  
 337 issued, agrees that the place or premises covered by the permit  
 338 is subject to inspection and search without a search warrant by  
 339 the division or its authorized assistants, and by sheriffs,  
 340 deputy sheriffs, or police officers, to determine compliance  
 341 with this part.

342 Section 15. Section 569.33, Florida Statutes, is created  
 343 to read:

344 569.33 Operating without a retail nicotine products dealer  
 345 permit; penalty.-

346 (1) It is unlawful for a person, firm, association, or  
 347 corporation to deal, at retail, in nicotine products, in any  
 348 manner, or to allow a nicotine products vending machine to be

349 located on its premises, without having a retail nicotine  
350 product dealer permit as required by s. 569.31. A person who  
351 violates this section is guilty of a noncriminal violation,  
352 punishable by a fine of not more than \$500.

353 (2) A retail tobacco products dealer, as defined in s.  
354 569.002, is not required to have a separate or additional retail  
355 nicotine products dealer permit to deal, at retail, nicotine  
356 products in this state, or allow a nicotine products vending  
357 machine to be located on its premises in this state. Any retail  
358 tobacco products dealer that deals, at retail, in nicotine  
359 products or allows a tobacco products vending machine to be  
360 located on its premises in this state, is subject to, and must  
361 be in compliance with, all the provisions in this part.

362 (3) Any person who violates this section shall be cited  
363 for such infraction and shall be cited to appear before the  
364 county court. The citation may indicate the time, date, and  
365 location of the scheduled hearing and must indicate that the  
366 penalty for a noncriminal violation is a fine of not more than  
367 \$500.

368 (4) A person cited for an infraction under this section  
369 may:

370 (a) Post a \$500 bond; or

371 (b) Sign and accept the citation indicating a promise to  
372 appear.

373 (5) (a) A person cited with violating this section may:

374 1. Pay the \$500 fine, either by mail or in person, within  
 375 10 days after receiving the citation; or

376 2. If that person has posted a bond, forfeit the bond by  
 377 not appearing at the scheduled hearing.

378 (b) If the person cited pays the \$500 fine or forfeits the  
 379 bond, that person is deemed to have admitted violating this  
 380 section and to have waived the right to a hearing on the issue  
 381 of commission of the violation. Such admission may not be used  
 382 as evidence in any other proceeding.

383 (6) The court, after a hearing, shall make a determination  
 384 as to whether an infraction has been committed. If the  
 385 commission of an infraction has been proven beyond a reasonable  
 386 doubt, the court may impose a civil penalty in an amount that  
 387 may not exceed \$500.

388 (7) If a person is found by the court to have committed  
 389 the infraction, that person may appeal that finding to the  
 390 circuit court.

391 Section 16. Section 569.34, Florida Statutes, is created  
 392 to read:

393 569.34 Retail nicotine product dealers; administrative  
 394 penalties.-- The division may suspend or revoke the permit of a  
 395 dealer, including the retail tobacco products dealer permit of a  
 396 retail tobacco products dealer as defined in 569.002, upon  
 397 sufficient cause appearing of the violation of any of the  
 398 provisions of this part, by a dealer or by a dealer's agent or

399 employee. The division may also assess and accept administrative  
400 finances of up to \$1,000 against a dealer for each violation. The  
401 division shall deposit all fines collected into the General  
402 Revenue Fund as collected. An order imposing an administrative  
403 fine becomes effective 15 days after the date of the order. The  
404 division may suspend the imposition of a penalty against a  
405 dealer, conditioned upon the dealer's compliance with terms the  
406 division considers appropriate.

407 Section 17. Section 569.37, Florida Statutes, is created  
408 to read:

409 569.37 Sale or delivery of nicotine products;  
410 restrictions.—

411 (1) In order to prevent persons under 18 years of age from  
412 purchasing or receiving nicotine products, the sale or delivery  
413 of nicotine products is prohibited, except:

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

416 (b) Sales from a vending machine are prohibited under the  
417 provisions of paragraph (1) (a) and are only permissible from a  
418 machine that is equipped with an operational lockout device  
419 which is under the control of the dealer or the dealer's agent  
420 or employee who directly regulates the sale of items through the  
421 machine by triggering the lockout device to allow the dispensing  
422 of one nicotine product. The lockout device must include a  
423 mechanism to prevent the machine from functioning if the power

424 source for the lockout device fails or if the lockout device is  
425 disabled, and a mechanism to ensure that only one nicotine  
426 product is dispensed at a time.

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

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

433 (3) The provisions of subsections (1) and (2) shall not  
434 apply to an establishment that prohibits persons under 18 years  
435 of age on the licensed premises.

436 (4) A dealer or a dealer's agent or employee may require  
437 proof of age of a purchaser of a nicotine product before selling  
438 the product or device to that person.

439 Section 18. Section 569.38, Florida Statutes, is created  
440 to read:

441 569.38 Gift of sample nicotine products and nicotine  
442 dispensing devices.-- The gift of sample nicotine products to  
443 any person under the age of 18 by an entity permitted under the  
444 provisions of this chapter, or by an employee of such entity, is  
445 prohibited and is punishable as provided in s. 569.40.

446 Section 19. Section 569.381, Florida Statutes, is created  
447 to read:

448 569.381 Responsible retail nicotine products dealers;

449 qualifications; mitigation of disciplinary penalties; diligent  
450 management and supervision; presumption.—

451 (1) The Legislature intends to prevent the sale of nicotine  
452 products to persons under 18 years of age and to encourage  
453 retail nicotine products dealers to comply with responsible  
454 practices in accordance with this section.

455 (2) To qualify as a responsible retail nicotine products  
456 dealer, the dealer must establish and implement procedures  
457 designed to ensure that the dealer's employees comply with the  
458 provisions of this part. The dealer must provide a training  
459 program for the dealer's employees which addresses the use and  
460 sale of nicotine products and which includes at least the  
461 following topics:

462 (a) Laws covering the sale of nicotine products.

463 (b) Methods of recognizing and handling customers under 18  
464 years of age.

465 (c) Procedures for proper examination of identification  
466 cards in order to verify that customers are not under 18 years  
467 of age.

468 (d) The use of the age audit identification function on  
469 electronic point-of-sale equipment, where available.

470 (3) In determining penalties under s. 569.34, the division  
471 may mitigate penalties imposed against a dealer because of an  
472 employee's illegal sale of a nicotine product to a person under  
473 18 years of age if the following conditions are met:

474        (a) The dealer is qualified as a responsible dealer under  
475 this section.

476        (b) The dealer provided the training program required under  
477 subsection (2) to that employee before the illegal sale  
478 occurred.

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

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

484        (4) The division shall develop and make available a model  
485 nicotine products training program designed to ensure adherence  
486 to this chapter by dealers and their employees which, if  
487 followed, will qualify dealers as responsible dealers.

488        (5) Dealers shall exercise diligence in the management and  
489 supervision of their premises and in the supervision and  
490 training of their employees, agents, or servants. In proceedings  
491 to impose penalties under s. 569.34, proof that employees,  
492 agents, or servants of the dealer, while in the scope of their  
493 employment, committed at least three violations of s. 569.40  
494 during a 180-day period shall be prima facie evidence of a lack  
495 of due diligence by the dealer in the management and supervision  
496 of his or her premises and in the supervision and training of  
497 employees, agents, officers, or servants.

498        (6) The division may consider qualification as a

499 responsible retail nicotine products dealer under this section  
 500 as evidence that the dealer properly exercised the diligence  
 501 required under this section.

502 Section 20. Section 569.39, Florida Statutes, is created  
 503 to read:

504 569.39 Rulemaking authority.-- The division shall adopt  
 505 any rules necessary to administer and enforce the provisions of  
 506 this part.

507 Section 21. Section 569.40, Florida Statutes, is created  
 508 to read:

509 569.40 Selling, delivering, bartering, furnishing, or  
 510 giving nicotine products to persons under 18 years of age;  
 511 criminal penalties; defense.--

512 (1) It is unlawful to sell, deliver, barter, furnish, or  
 513 give, directly or indirectly, to any person who is under 18  
 514 years of age, any nicotine product.

515 (2) Any person who violates subsection (1) commits a  
 516 misdemeanor of the second degree, punishable as provided in s.  
 517 775.082 or s. 775.083. However, any person who violates  
 518 subsection (1) for a second or subsequent time within 1 year of  
 519 the first violation, commits a misdemeanor of the first degree,  
 520 punishable as provided in s. 775.082 or s. 775.083.

521 (3) A person charged with a violation of subsection (1) has  
 522 a complete defense if, at the time the nicotine product was  
 523 sold, delivered, bartered, furnished, or given:

524 (a) The buyer or recipient falsely evidenced that she or he  
 525 was 18 years of age or older;

526 (b) The appearance of the buyer or recipient was such that  
 527 a prudent person would believe the buyer or recipient to be 18  
 528 years of age or older; and

529 (c) Such person carefully checked a driver license or an  
 530 identification card issued by this state or another state of the  
 531 United States, a passport, or a United States armed services  
 532 identification card presented by the buyer or recipient and  
 533 acted in good faith and in reliance upon the representation and  
 534 appearance of the buyer or recipient in the belief that the  
 535 buyer or recipient was 18 years of age or older.

536 Section 22. Section 569.41, Florida Statutes, is created  
 537 to read:

538 569.41 Possession, misrepresenting age or military service  
 539 to purchase, and purchase of nicotine products by persons under  
 540 18 years of age prohibited; penalties; jurisdiction; disposition  
 541 of fines.—

542 (1) It is unlawful for any person under 18 years of age to  
 543 knowingly possess any nicotine product. Any person under 18  
 544 years of age who violates this subsection commits a noncriminal  
 545 violation as provided in s. 775.08(3), punishable by:

546 (a) For a first violation, 16 hours of community service  
 547 or, instead of community service, a \$25 fine. In addition, the  
 548 person must attend a school-approved anti-tobacco and anti-

549 nicotine program, if locally available; or

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

552  
553 Any second or subsequent violation not within the 12-week period  
554 after the first violation is punishable as provided for a first  
555 violation.

556 (2) It is unlawful for any person under 18 years of age to  
557 misrepresent his or her age or military service for the purpose  
558 of inducing a dealer or an agent or employee of the dealer to  
559 sell, give, barter, furnish, or deliver any nicotine product, or  
560 to purchase, or attempt to purchase, any nicotine product from a  
561 person or a vending machine. Any person under 18 years of age  
562 who violates this subsection commits a noncriminal violation as  
563 provided in s. 775.08(3), punishable by:

564 (a) For a first violation, 16 hours of community service  
565 or, instead of community service, a \$25 fine and, in addition,  
566 the person must attend a school-approved anti-tobacco and anti-  
567 nicotine program, if available; or

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

570  
571 Any second or subsequent violation not within the 12-week period  
572 after the first violation is punishable as provided for a first  
573 violation.

574       (3) Any person under 18 years of age cited for committing a  
575 noncriminal violation under this section must sign and accept a  
576 civil citation indicating a promise to appear before the county  
577 court or comply with the requirement for paying the fine and  
578 must attend a school-approved anti-tobacco and anti-nicotine  
579 program, if locally available. If a fine is assessed for a  
580 violation of this section, the fine must be paid within 30 days  
581 after the date of the citation or, if a court appearance is  
582 mandatory, within 30 days after the date of the hearing.

583       (4) A person charged with a noncriminal violation under  
584 this section must appear before the county court or comply with  
585 the requirement for paying the fine. The court, after a hearing,  
586 shall make a determination as to whether the noncriminal  
587 violation was committed. If the court finds the violation was  
588 committed, it shall impose an appropriate penalty as specified  
589 in subsection (1) or subsection (2). A person who participates  
590 in community service shall be considered an employee of the  
591 state for the purpose of chapter 440, for the duration of such  
592 service.

593       (5) (a) If a person under 18 years of age is found by the  
594 court to have committed a noncriminal violation under this  
595 section and that person has failed to complete community  
596 service, pay the fine as required by paragraph (1) (a) or  
597 paragraph (2) (a), or attend a school-approved anti-tobacco and  
598 anti-nicotine program, if locally available, the court may

599 direct the Department of Highway Safety and Motor Vehicles to  
600 withhold issuance of or suspend the driver license or driving  
601 privilege of that person for a period of 30 consecutive days.

602 (b) If a person under 18 years of age is found by the court  
603 to have committed a noncriminal violation under this section and  
604 that person has failed to pay the applicable fine as required by  
605 paragraph (1)(b) or paragraph (2)(b), the court may direct the  
606 Department of Highway Safety and Motor Vehicles to withhold  
607 issuance of or suspend the driver license or driving privilege  
608 of that person for a period of 45 consecutive days.

609 (6) Eighty percent of all civil penalties received by a  
610 county court pursuant to this section shall be remitted by the  
611 clerk of the court to the Department of Revenue for transfer to  
612 the Department of Education to provide for teacher training and  
613 for research and evaluation to reduce and prevent the use of  
614 nicotine products by children. The remaining 20 percent of civil  
615 penalties received by a county court pursuant to this section  
616 shall remain with the clerk of the county court to cover  
617 administrative costs.

618 Section 23. Section 569.42, Florida Statutes, is created  
619 to read:

620 569.42 Posting a sign stating that the sale of nicotine  
621 products to persons under 18 years of age is unlawful;  
622 enforcement; penalty.-

623 (1) A dealer that sells nicotine products shall post a

624 clear and conspicuous sign in each place of business where such  
 625 products are sold which substantially states the following:

626  
 627 THE SALE OF NICOTINE PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS  
 628 AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

629  
 630 A dealer that uses a sign as described in this subsection meets  
 631 the signage requirements of subsection (1).

632 (2) The division shall make available to dealers of  
 633 nicotine products signs that meet the requirements of subsection  
 634 (1).

635 (3) Any dealer that sells nicotine products shall provide  
 636 at the checkout counter in a location clearly visible to the  
 637 dealer or the dealer's agent or employee instructional material  
 638 in a calendar format or similar format to assist in determining  
 639 whether a person is of legal age to purchase nicotine products.  
 640 This point of sale material must contain substantially the  
 641 following language:

642  
 643 IF YOU WERE NOT BORN BEFORE THIS DATE

644 (insert date and applicable year)

645 YOU CANNOT BUY NICOTINE OR TOBACCO PRODUCTS.

646  
 647 Upon approval by the division, in lieu of a calendar a dealer  
 648 may use card readers, scanners, or other electronic or automated

649 systems that can verify whether a person is of legal age to  
650 purchase nicotine products. Failure to comply with the  
651 provisions contained in this subsection shall result in  
652 imposition of administrative penalties as provided in s. 569.34.

653 (4) The division, through its agents and inspectors, shall  
654 enforce this section.

655 (5) Any person who fails to comply with subsection (1) is  
656 guilty of a misdemeanor of the second degree, punishable as  
657 provided in s. 775.082 or s. 775.083.

658 Section 24. Section 569.43, Florida Statutes, is created  
659 to read:

660 569.43 Annual report.-- The division shall report annually  
661 with written findings to the Legislature and the Governor by  
662 December 31, on the progress of implementing the enforcement  
663 provisions of this part. This must include, but is not limited  
664 to:

665 (1) The number and results of compliance visits.

666 (2) The number of violations for failure of a retailer to  
667 hold a valid permit.

668 (3) The number of violations for selling nicotine products  
669 to persons under age 18, and the results of administrative  
670 hearings on the above and related issues.

671 (4) The number of persons under age 18 cited for  
672 violations of s. 569.41 and sanctions imposed as a result of  
673 citation.

674 Section 25. Section 569.45, Florida Statutes, is created  
675 to read:

676 569.45 Mail order, Internet, and remote sales of nicotine  
677 products; age verification.-

678 (1) For purposes of this section, the term:

679 (a) "Adult" means an individual who is at least of the  
680 legal minimum purchase age for nicotine products.

681 (b) "Consumer" means a person in this state who comes into  
682 possession of any nicotine product who, at the time of  
683 possession, is not a intending to sell or distribute the  
684 nicotine product, or is a retailer.

685 (c) "Delivery sale" means any sale of nicotine products to  
686 a consumer in this state for which:

687 1. The consumer submits the order for the sale by  
688 telephonic or other voice transmission, mail, delivery service,  
689 or the Internet or other online service; or

690 2. The nicotine products are delivered by use of mail or a  
691 delivery service.

692 (d) "Delivery service" means any person engaged in the  
693 commercial delivery of letters, packages, or other containers.

694 (e) "Legal minimum purchase age" means the minimum age at  
695 which an individual may legally purchase nicotine products in  
696 this state.

697 (f) "Retailer" means any person who is required to obtain a  
698 retail nicotine products dealer permit or a retail tobacco

699 products dealer permit, as defined in s. 569.002.

700 (g) "Shipping container" means a container in which  
701 nicotine products are shipped in connection with a delivery  
702 sale.

703 (h) "Shipping document" means a bill of lading, airbill,  
704 United States Postal Service form, or any other document used to  
705 verify the undertaking by a delivery service to deliver letters,  
706 packages, or other containers.

707 (2) (a) A sale of nicotine products constituting a delivery  
708 sale pursuant to paragraph (1) (c) is a delivery sale regardless  
709 of whether the person accepting the order for the delivery sale  
710 is located inside or outside this state.

711 (b) A retailer must obtain a retail nicotine products  
712 dealer permit or a retail tobacco products dealer permit, as  
713 defined in 569.002, from the division pursuant to the  
714 requirements of this chapter before accepting an order for a  
715 delivery sale.

716 (c) A person may not make a delivery sale of nicotine  
717 products to any individual who is not an adult.

718 (d) Each person accepting an order for a delivery sale must  
719 comply with each of the following:

720 1. The age-verification requirements set forth in  
721 subsection (3).

722 2. The disclosure requirements set forth in subsection (4).

723 3. The shipping requirements set forth in subsection (5).

724 4. The registration and reporting requirements set forth in  
725 subsection (6).

726 (3) A person may not mail, ship, or otherwise deliver  
727 nicotine products in connection with an order for a delivery  
728 sale unless, before the first delivery to the consumer, the  
729 person accepting the order for the delivery sale:

730 (a) Obtains from the person submitting the order a  
731 certification that includes:

732 1. Reliable confirmation that the person is an adult; and

733 2. A statement signed by the person in writing and under  
734 penalty of perjury which:

735 a. Certifies the address and date of birth of the person;  
736 and

737 b. Confirms that the person wants to receive delivery sales  
738 from a nicotine products company and understands that, under the  
739 laws of this state, the following actions are illegal:

740 (I) Signing another person's name to the certification;

741 (II) Selling nicotine products to individuals who are not  
742 adults; and

743 (III) Purchasing nicotine products, if the person making  
744 the purchase is not an adult.

745 (b) Makes a good faith effort to verify the information  
746 contained in the certification provided by the individual  
747 pursuant to paragraph (a) against a commercially available  
748 database that may be reasonably relied upon for accurate age

749 information or obtains a photocopy or other image of a valid  
750 government-issued identification card stating the date of birth  
751 or age of the individual.

752 (c) Provides to the individual, via electronic mail or  
753 other means, a notice meeting the requirements of subsection  
754 (4).

755 (d) If an order for nicotine products is made pursuant to  
756 an advertisement on the Internet, receives payment for the  
757 delivery sale from the consumer by a credit or debit card issued  
758 in the name of the consumer, or by personal or company check of  
759 the consumer.

760 (e) The person accepting the order for delivery sale shall  
761 submit, to each credit card acquiring company with which the  
762 person has credit card sales, identification information in an  
763 appropriate form and format so that the words "nicotine product"  
764 may be printed in the purchaser's credit card statement when a  
765 purchase of a nicotine product is made by credit card payment.

766 (f) Makes a telephone call after 5 p.m. to the purchaser  
767 confirming the order before shipping the nicotine products. The  
768 telephone call may be a person-to-person call or a recorded  
769 message. The person accepting the order for delivery sale is not  
770 required to speak directly with a person and may leave a message  
771 on an answering machine or through voice mail.

772 In addition to the requirements of this subsection, a person  
773 accepting an order for a delivery sale may request that a

774 consumer provide an electronic mail address.

775 (4) The notice described in paragraph (3)(c) must include  
776 prominent and clearly legible statements that sales of nicotine  
777 products are:

778 (a) Illegal if made to individuals who are not adults.

779 (b) Restricted to those individuals who provide verifiable  
780 proof of age in accordance with subsection (3).

781 (5) Each person who mails, ships, or otherwise delivers  
782 nicotine products in connection with an order for a delivery  
783 sale must:

784 (a) Include as part of the shipping documents, in a clear  
785 and conspicuous manner, the following statement: "Nicotine  
786 Products: Florida law prohibits shipping to individuals under 18  
787 years of age."

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

790 1. The individual submitting the order for the delivery  
791 sale or another adult who resides at the individual's address to  
792 sign his or her name to accept delivery of the shipping  
793 container. Proof of the legal minimum purchase age of the  
794 individual accepting delivery is required only if the individual  
795 appears to be under 27 years of age.

796 2. Proof that the individual is either the addressee or the  
797 adult designated by the addressee, in the form of a valid,  
798 government-issued identification card bearing a photograph of

799 the individual who signs to accept delivery of the shipping  
 800 container.

801 (c) Provide to the delivery service, if such service is  
 802 used, evidence of full compliance with subsection (5).

803 If the person accepting a purchase order for a delivery sale  
 804 delivers the nicotine products without using a delivery service,  
 805 the person must comply with all of the requirements of this  
 806 section which apply to a delivery service. Any failure to comply  
 807 with a requirement of this section constitutes a violation  
 808 thereof.

809 (6) This section does not apply to delivery sales of  
 810 nicotine products to a retail nicotine products dealer or a  
 811 retail tobacco products dealer, as defined in s. 569.002.

812 (7) An adult who knowingly violates any provision of this  
 813 section commits a misdemeanor of the second degree, punishable  
 814 as provided in s. 775.082 or s. 775.083.

815 (8) The Attorney General, the Attorney General's designee,  
 816 or a state attorney may bring an action in the appropriate court  
 817 in this state to prevent or restrain violations of this section  
 818 by any person.

819 Section 26. Subsection (1) of section 768.73, Florida  
 820 Statutes, is amended to read:

821 768.73 Punitive damages; limitation.—

822 (1) (a) Except as provided in paragraphs (b), ~~and~~ (c), and  
 823 (d), an award of punitive damages may not exceed the greater of:

824 1. Three times the amount of compensatory damages awarded  
 825 to each claimant entitled thereto, consistent with the remaining  
 826 provisions of this section; or

827 2. The sum of \$500,000.

828 (b) Where the fact finder determines that the wrongful  
 829 conduct proven under this section was motivated solely by  
 830 unreasonable financial gain and determines that the unreasonably  
 831 dangerous nature of the conduct, together with the high  
 832 likelihood of injury resulting from the conduct, was actually  
 833 known by the managing agent, director, officer, or other person  
 834 responsible for making policy decisions on behalf of the  
 835 defendant, it may award an amount of punitive damages not to  
 836 exceed the greater of:

837 1. Four times the amount of compensatory damages awarded  
 838 to each claimant entitled thereto, consistent with the remaining  
 839 provisions of this section; or

840 2. The sum of \$2 million.

841 (c) Where the fact finder determines that the wrongful  
 842 conduct proven under this section was committed by a  
 843 manufacturer of a vapor-generating electronic device as defined  
 844 in s. 386.203(15), or a manufacturer of a nicotine product or  
 845 nicotine dispensing device as defined in s. 569.30, it may award  
 846 against such manufacturer an amount of punitive damages not to  
 847 exceed the greater of:

848 1. Four times the amount of compensatory damages awarded

849 to each claimant entitled thereto, consistent with the remaining  
 850 provisions of this section; or

851 2. The sum of \$2 million.

852 ~~(d)(e)~~ Where the fact finder determines that at the time  
 853 of injury the defendant had a specific intent to harm the  
 854 claimant and determines that the defendant's conduct did in fact  
 855 harm the claimant, there shall be no cap on punitive damages.

856 ~~(e)(d)~~ This subsection is not intended to prohibit an  
 857 appropriate court from exercising its jurisdiction under s.  
 858 768.74 in determining the reasonableness of an award of punitive  
 859 damages that is less than three times the amount of compensatory  
 860 damages.

861 Section 27. Section 877.112, Florida Statutes, is  
 862 repealed.

863 Section 28. This act shall take effect October 1, 2020.