

1                   A bill to be entitled  
2           An act relating to nicotine products; renaming ch.  
3           569, F.S.; providing directives to the Division of Law  
4           Revision; amending s. 569.002, F.S.; defining the  
5           terms "nicotine products" and "nicotine dispensing  
6           devices"; amending ss. 569.004, 569.006, and 569.009  
7           F.S.; conforming provisions to changes made by the  
8           act; amending s. 569.0073, F.S.; revising an exception  
9           to a prohibition of the offer for sale at retail of  
10          specified items; amending s. 569.12, F.S.; expanding  
11          authority of tobacco product enforcement officers to  
12          include nicotine products; amending s. 569.14, F.S.;  
13          revising requirements for certain signage; amending s.  
14          569.19, F.S.; conforming a provision to changes made  
15          by the act; creating s. 569.31, F.S.; providing  
16          definitions; creating s. 569.32, F.S.; requiring  
17          retailer nicotine product dealers to have a permit;  
18          providing requirements for such permit; creating s.  
19          569.33, F.S.; providing for consent to inspection and  
20          search; creating s. 569.34, F.S.; prohibiting certain  
21          persons, firms, associations, or corporations from  
22          operating without a permit; providing a penalty;  
23          creating s. 569.35, F.S.; providing administrative  
24          penalties for retail nicotine product dealers under  
25          certain circumstances; creating s. 569.37, F.S.;

26 providing restrictions of the sale or delivery of  
27 nicotine products; creating s. 569.38, F.S.;  
28 prohibiting giving nicotine product samples to certain  
29 persons; creating s. 569.381, F.S.; providing  
30 legislative intent, qualifications for responsible  
31 retail nicotine product dealers, and mitigation of  
32 disciplinary penalties; creating s. 569.39, F.S.;  
33 requiring the division to adopt rules; creating ss.  
34 569.41 and 569.42, F.S.; providing civil and criminal  
35 penalties; creating s. 569.43, F.S.; providing signage  
36 requirements; creating s. 569.44, F.S.; requiring an  
37 annual report; creating s. 569.45, F.S.; providing  
38 requirements for remote sales of nicotine products;  
39 providing a criminal penalty for knowingly violating  
40 such requirements; amending s. 768.73, F.S.; revising  
41 punitive damages; repealing s. 877.112, F.S., relating  
42 to nicotine products and nicotine dispensing devices;  
43 providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Chapter 569, entitled "Tobacco Products," is  
48 renamed "Tobacco and Nicotine Products."

49 Section 2. The Division of Law Revision is directed to:  
50 (1) Create part I of chapter 569, Florida Statutes,

51 consisting of ss. 569.002-569.23, Florida Statutes, to be  
52 entitled "Tobacco Products."

53 (2) Create part II of chapter 569, Florida Statutes,  
54 consisting of ss. 569.31-569.45, Florida Statutes, to be  
55 entitled "Nicotine Products."

56 Section 3. Subsections (3) through (7) of section 569.002,  
57 Florida Statutes, are renumbered as subsections (5) through (9),  
58 respectively, and new subsections (3) and (4) are added to that  
59 section, to read:

60 569.002 Definitions.—As used in this part ~~chapter~~, the  
61 term:

62 (3) "Nicotine product" has the same meaning as provided in  
63 s. 569.31(4).

64 (4) "Nicotine dispensing device" has the same meaning as  
65 provided in s. 569.31(3).

66 Section 4. Section 569.004, Florida Statutes, is amended  
67 to read:

68 569.004 Consent to inspection and search without warrant.—  
69 An applicant for a permit, by accepting the permit when issued,  
70 agrees that the place or premises covered by the permit is  
71 subject to inspection and search without a search warrant by the  
72 division or its authorized assistants, and by sheriffs, deputy  
73 sheriffs, or police officers, to determine compliance with this  
74 chapter, including part II of this chapter if the applicant  
75 deals, at retail, nicotine products within the state or allows a

76 | nicotine products vending machine to be located on its premises  
77 | within the state.

78 | Section 5. Section 569.006, Florida Statutes, is amended  
79 | to read:

80 | 569.006 Retail tobacco products dealers; administrative  
81 | penalties.—The division may suspend or revoke the permit of the  
82 | dealer upon sufficient cause appearing of the violation of any  
83 | of the provisions of this chapter, including part II of this  
84 | chapter if the dealer deals, at retail, nicotine products within  
85 | the state or allows a nicotine products vending machine to be  
86 | located on its premises within the state, by a dealer or by a  
87 | dealer's agent or employee. The division may also assess and  
88 | accept administrative fines of up to \$1,000 against a dealer for  
89 | each violation. The division shall deposit all fines collected  
90 | into the General Revenue Fund as collected. An order imposing an  
91 | administrative fine becomes effective 15 days after the date of  
92 | the order. The division may suspend the imposition of a penalty  
93 | against a dealer, conditioned upon the dealer's compliance with  
94 | terms the division considers appropriate.

95 | Section 6. Subsection (1) of section 569.0073, Florida  
96 | Statutes, is amended to read:

97 | 569.0073 Special provisions; smoking pipes and smoking  
98 | devices.—

99 | (1) It is unlawful for any person to offer for sale at  
100 | retail any of the items listed in subsection (2) unless such

101 person:

102 (a) Has a retail tobacco products dealer permit under s.

103 569.003. The provisions of this chapter apply to any person that

104 offers for retail sale any of the items listed in subsection

105 (2); and

106 (b)1. Derives at least 75 percent of its annual gross

107 revenues from the retail sale of cigarettes, cigars, ~~and~~ other

108 tobacco products, or nicotine products; or

109 2. Derives no more than 25 percent of its annual gross

110 revenues from the retail sale of the items listed in subsection

111 (2).

112 Section 7. Section 569.009, Florida Statutes, is amended

113 to read:

114 569.009 Rulemaking authority.—The division shall adopt any

115 rules necessary to administer and enforce the provisions of this

116 part ~~chapter~~.

117 Section 8. Section 569.12, Florida Statutes, is amended to

118 read:

119 569.12 Jurisdiction; tobacco product and nicotine product

120 enforcement officers or agents; enforcement.—

121 (1) In addition to the Division of Alcoholic Beverages and

122 Tobacco of the Department of Business and Professional

123 Regulation, any law enforcement officer certified under s.

124 943.10(1), (6), or (8) shall enforce the provisions of this

125 chapter.

126           (2) (a) A county or municipality may designate certain of  
127 its employees or agents as tobacco product and nicotine product  
128 enforcement officers. The training and qualifications of the  
129 employees or agents for such designation shall be determined by  
130 the county or the municipality. Nothing in this section shall be  
131 construed to permit the carrying of firearms or other weapons by  
132 a tobacco product and nicotine product enforcement agent, nor  
133 does designation as a tobacco product and nicotine product  
134 enforcement officer provide the employee or agent with the power  
135 of arrest or subject the employee or agent to the provisions of  
136 ss. 943.085-943.255. Nothing in this section amends, alters, or  
137 contravenes the provisions of any state-administered retirement  
138 system or any state-supported retirement system established by  
139 general law.

140           (b) A tobacco and nicotine product enforcement officer is  
141 authorized to issue a citation to a person under the age of 18  
142 when, based upon personal investigation, the officer has  
143 reasonable cause to believe that the person has committed a  
144 civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s.  
145 569.42.

146           (3) A correctional probation officer as defined in s.  
147 943.10(3) is authorized to issue a citation to a person under  
148 the age of 18 when, based upon personal investigation, the  
149 officer has reasonable cause to believe that the person has  
150 committed a civil infraction in violation of s. 569.11 or s.

151 569.42.

152 (4) A citation issued to any person violating the  
153 provisions of s. 569.11 or s. 569.42 shall be in a form  
154 prescribed by the Division of Alcoholic Beverages and Tobacco of  
155 the Department of Business and Professional Regulation and shall  
156 contain:

157 (a) The date and time of issuance.

158 (b) The name and address of the person to whom the  
159 citation is issued.

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

161 (d) The facts constituting reasonable cause.

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

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

164 (g) The procedure for the person to follow in order to  
165 contest the citation, perform the required community service,  
166 attend the required anti-tobacco or anti-tobacco and anti-  
167 nicotine program, or to pay the civil penalty.

168 Section 9. Subsections (2) and (4) of section 569.14,  
169 Florida Statutes, are amended to read:

170 569.14 Posting of a sign stating that the sale of tobacco  
171 products or nicotine products to persons under 18 years of age  
172 is unlawful; enforcement; penalty.—

173 (2) A dealer that sells tobacco products and nicotine  
174 products or nicotine dispensing devices, ~~as defined in s.~~  
175 ~~877.112,~~ may use a sign that substantially states the following:

176  
 177 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
 178 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST  
 179 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

180  
 181 A dealer that uses a sign as described in this subsection meets  
 182 the signage requirements of subsection (1) and s. 569.43(1) ~~s.~~  
 183 ~~877.112~~.

184 (4) Any dealer that sells tobacco products shall provide  
 185 at the checkout counter in a location clearly visible to the  
 186 dealer or the dealer's agent or employee instructional material  
 187 in a calendar format or similar format to assist in determining  
 188 whether a person is of legal age to purchase tobacco products.  
 189 This point of sale material must contain substantially the  
 190 following language:

191 IF YOU WERE NOT BORN BEFORE THIS DATE

192 (insert date and applicable year)

193 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS,  
 194 OR NICOTINE DISPENSING DEVICES.

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

201 Section 10. Section 569.19, Florida Statutes, is amended  
 202 to read:

203 569.19 Annual report.—The division shall report annually  
 204 with written findings to the Legislature and the Governor by  
 205 December 31, on the progress of implementing the enforcement  
 206 provisions of this part ~~chapter~~. This must include, but is not  
 207 limited to:

- 208 (1) The number and results of compliance visits.
- 209 (2) The number of violations for failure of a retailer to  
 210 hold a valid license.
- 211 (3) The number of violations for selling tobacco products  
 212 to persons under age 18, and the results of administrative  
 213 hearings on the above and related issues.
- 214 (4) The number of persons under age 18 cited for  
 215 violations of s. 569.11 and sanctions imposed as a result of  
 216 citation.

217 Section 11. Section 569.31, Florida Statutes, is created  
 218 to read:

219 569.31 Definitions.—As used in this part, the term:

- 220 (1) "Dealer" is synonymous with the term "retail nicotine  
 221 products dealer."
- 222 (2) "Division" means the Division of Alcoholic Beverages  
 223 and Tobacco of the Department of Business and Professional  
 224 Regulation.
- 225 (3) "Nicotine dispensing device" means any product that

226 employs an electronic, chemical, or mechanical means to produce  
227 vapor or aerosol from a nicotine product, including, but not  
228 limited to, an electronic cigarette, electronic cigar,  
229 electronic cigarillo, electronic pipe, or other similar device  
230 or product, any replacement cartridge for such device, and any  
231 other container of nicotine in a solution or other form intended  
232 to be used with or within an electronic cigarette, electronic  
233 cigar, electronic cigarillo, electronic pipe, or other similar  
234 device or product.

235 (4) "Nicotine product" means any product that contains  
236 nicotine, including liquid nicotine, which is intended for human  
237 consumption, whether inhaled, chewed, absorbed, dissolved, or  
238 ingested by any means. The term also includes any nicotine  
239 dispensing device. The term does not include a:

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

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

244 (c) Product that contains incidental nicotine.

245 (5) "Permit" is synonymous with the term "retail nicotine  
246 products dealer permit."

247 (6) "Retail nicotine products dealer" means the holder of  
248 a retail nicotine products dealer permit.

249 (7) "Retail nicotine products dealer permit" means a  
250 permit issued by the division under s. 569.32.

251 (8) "Self-service merchandising" means the open display of  
252 nicotine products, whether packaged or otherwise, for direct  
253 retail customer access and handling before purchase without the  
254 intervention or assistance of the retailer or the retailer's  
255 owner, employee, or agent. An open display of such products and  
256 devices includes the use of an open display unit.

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

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

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

263 (c) Is otherwise emancipated by a court of competent  
264 jurisdiction and released from parental care and responsibility;  
265 or

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

267 Section 12. Section 569.32, Florida Statutes, is created  
268 to read:

269 569.32 Retail nicotine products dealer permits;  
270 application; qualifications; renewal; duplicates.—

271 (1) (a) Each person, firm, association, or corporation that  
272 seeks to deal, at retail, in nicotine products within the state,  
273 or to allow a nicotine products vending machine to be located on  
274 its premises in the state, must obtain a retail nicotine  
275 products dealer permit for each place of business or the

276 premises at which nicotine products are sold. Each dealer  
277 owning, leasing, furnishing, or operating vending machines  
278 through which nicotine products are sold must obtain a permit  
279 for each machine and shall post the permit in a conspicuous  
280 place on or near the machine; however, if the dealer has more  
281 than one vending machine at a single location or if nicotine  
282 products are sold both over the counter and through a vending  
283 machine at a single location, the dealer need obtain only one  
284 permit for that location.

285 (b) Application for a permit must be made on a form  
286 furnished by the division and must set forth the name under  
287 which the applicant transacts or intends to transact business,  
288 the address of the location of the applicant's place of business  
289 within the state, and any other information the division  
290 requires. If the applicant has or intends to have more than one  
291 place of business dealing in nicotine products within the state,  
292 a separate application must be made for each place of business.  
293 If the applicant is a firm or an association, the application  
294 must set forth the names and addresses of the persons  
295 constituting the firm or association; if the applicant is a  
296 corporation, the application must set forth the names and  
297 addresses of the principal officers of the corporation. The  
298 application must also set forth any other information prescribed  
299 by the division for the purpose of identifying the applicant  
300 firm, association, or corporation. The application must be

301 signed and verified by oath or affirmation by the owner, if a  
302 sole proprietor, or, if the owner is a firm, association, or  
303 partnership, by the members or partners thereof, or, if the  
304 owner is a corporation, by an executive officer of the  
305 corporation or by a person authorized by the corporation to sign  
306 the application, together with the written evidence of this  
307 authority.

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

311 (b) The division may refuse to issue a permit to any  
312 person, firm, association, or corporation the permit of which  
313 has been revoked, to any corporation an officer of which has had  
314 his or her permit revoked, or to any person who is or has been  
315 an officer of a corporation the permit of which has been  
316 revoked. Any permit issued to a firm, association, or  
317 corporation prohibited from obtaining a permit under this  
318 chapter shall be revoked by the division.

319 (3) Upon approval of an application for a permit, the  
320 division shall issue to the applicant a permit for the place of  
321 business or premises specified in the application. A permit is  
322 not assignable and is valid only for the person in whose name  
323 the permit is issued and for the place designated in the permit.  
324 The permit shall be conspicuously displayed at all times at the  
325 place for which issued.

326 Section 13. Section 569.33 Florida Statutes, is created to  
 327 read:

328 569.33 Consent to inspection and search without warrant.-  
 329 An applicant for a retail nicotine products dealer permit, by  
 330 accepting the permit when issued, agrees that the place or  
 331 premises covered by the permit is subject to inspection and  
 332 search without a search warrant by the division or its  
 333 authorized assistants, and by sheriffs, deputy sheriffs, or  
 334 police officers, to determine compliance with this part.

335 Section 14. Section 569.34, Florida Statutes, is created  
 336 to read:

337 569.34 Operating without a retail nicotine products dealer  
 338 permit; penalty.-

339 (1) It is unlawful for a person, firm, association, or  
 340 corporation to deal, at retail, in nicotine products, in any  
 341 manner, or to allow a nicotine products vending machine to be  
 342 located on its premises, without having a retail nicotine  
 343 product dealer permit as required by s. 569.32. A person who  
 344 violates this section commits a noncriminal violation,  
 345 punishable by a fine of not more than \$500.

346 (2) A retail tobacco products dealer, as defined in s.  
 347 569.002, is not required to have a separate or additional retail  
 348 nicotine products dealer permit to deal, at retail, nicotine  
 349 products in the state, or allow a nicotine products vending  
 350 machine to be located on its premises in the state. Any retail

351 tobacco products dealer that deals, at retail, in nicotine  
352 products or allows a tobacco products vending machine to be  
353 located on its premises in the state, is subject to, and must be  
354 in compliance with, this part.

355 (3) Any person who violates this section shall be cited  
356 for such infraction and shall be cited to appear before the  
357 county court. The citation may indicate the time, date, and  
358 location of the scheduled hearing and must indicate that the  
359 penalty for a noncriminal violation is a fine of not more than  
360 \$500.

361 (a) A person cited for an infraction under this section  
362 may:

- 363 1. Post a \$500 bond; or  
364 2. Sign and accept the citation indicating a promise to  
365 appear.

366 (b) A person cited for violating this section may:

- 367 1. Pay the fine, either by mail or in person, within 10  
368 days after receiving the citation; or  
369 2. If the person has posted bond, forfeit the bond by not  
370 appearing at the scheduled hearing.

371 (c) If the person pays the fine or forfeits bond, the  
372 person is deemed to have admitted violating this section and to  
373 have waived the right to a hearing on the issue of commission of  
374 the violation. Such admission may not be used as evidence in any  
375 other proceeding.

376        (d) The court, after a hearing, shall make a determination  
377 as to whether an infraction has been committed. If the  
378 commission of an infraction has been proven beyond a reasonable  
379 doubt, the court may impose a civil penalty in an amount that  
380 may not exceed \$500.

381        (e) If a person is found by the court to have committed  
382 the infraction, that person may appeal that finding to the  
383 circuit court.

384        Section 15. Section 569.35, Florida Statutes, is created  
385 to read:

386        569.35 Retail nicotine product dealers; administrative  
387 penalties.—The division may suspend or revoke the permit of a  
388 dealer, including the retail tobacco products dealer permit of a  
389 retail tobacco products dealer as defined in s. 569.002, upon  
390 sufficient cause appearing of the violation of any of the  
391 provisions of this part, by a dealer, or by a dealer's agent or  
392 employee. The division may also assess and accept an  
393 administrative fine of up to \$1,000 against a dealer for each  
394 violation. The division shall deposit all fines collected into  
395 the General Revenue Fund as collected. An order imposing an  
396 administrative fine becomes effective 15 days after the date of  
397 the order. The division may suspend the imposition of a penalty  
398 against a dealer, conditioned upon the dealer's compliance with  
399 terms the division considers appropriate.

400        Section 16. Section 569.37, Florida Statutes, is created

401 to read:

402 569.37 Sale or delivery of nicotine products;  
403 restrictions.-

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

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

409 (b) Sales from a vending machine are prohibited under  
410 paragraph (a) and are only permissible from a machine that is  
411 equipped with an operational lockout device that is under the  
412 control of the dealer or the dealer's agent or employee who  
413 directly regulates the sale of items through the machine by  
414 triggering the lockout device to allow the dispensing of one  
415 nicotine product. The lockout device must include a mechanism to  
416 prevent the machine from functioning if the power source for the  
417 lockout device fails or if the lockout device is disabled, and a  
418 mechanism to ensure that only one nicotine product is dispensed  
419 at a time.

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

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

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

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

432       Section 17. Section 569.38, Florida Statutes, is created  
433 to read:

434       569.38 Gift of sample nicotine products and nicotine  
435 dispensing devices.—The gift of sample nicotine products to any  
436 person under the age of 18 by an entity permitted under this  
437 chapter, or by an employee of such entity, is prohibited and is  
438 punishable as provided in s. 569.41.

439       Section 18. Section 569.381, Florida Statutes, is created  
440 to read:

441       569.381 Responsible retail nicotine products dealers;  
442 qualifications; mitigation of disciplinary penalties; diligent  
443 management and supervision; presumption.—

444       (1) It is the intent of the Legislature to prevent the  
445 sale of nicotine products to persons under 18 years of age and  
446 to encourage retail nicotine products dealers to comply with  
447 responsible practices in accordance with this section.

448       (2) To qualify as a responsible retail nicotine products  
449 dealer, the dealer must establish and implement procedures  
450 designed to ensure that the dealer's employees comply with this

451 part. The dealer must provide a training program for the  
452 dealer's employees which addresses the use and sale of nicotine  
453 products and which includes at least the following topics:

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

455 (b) Methods of recognizing and handling customers under 18  
456 years of age.

457 (c) Procedures for proper examination of identification  
458 cards in order to verify that customers are not under 18 years  
459 of age.

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

462 (3) In determining penalties under s. 569.35, the division  
463 may mitigate penalties imposed against a dealer because of an  
464 employee's illegal sale of a nicotine product to a person under  
465 18 years of age if the following conditions are met:

466 (a) The dealer is qualified as a responsible dealer under  
467 this section.

468 (b) The dealer provided the training program required  
469 under subsection (2) to that employee before the illegal sale  
470 occurred.

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

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

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

480       (5) Dealers shall exercise diligence in the management and  
481 supervision of their premises and in the supervision and  
482 training of their employees, agents, or servants. In proceedings  
483 to impose penalties under s. 569.35, proof that employees,  
484 agents, or servants of the dealer, while in the scope of their  
485 employment, committed at least three violations of s. 569.41  
486 during a 180-day period shall be prima facie evidence of a lack  
487 of due diligence by the dealer in the management and supervision  
488 of his or her premises and in the supervision and training of  
489 employees, agents, officers, or servants.

490       (6) The division may consider qualification as a  
491 responsible retail nicotine products dealer under this section  
492 as evidence that the dealer properly exercised the diligence  
493 required under this section.

494       Section 19. Section 569.39, Florida Statutes, is created  
495 to read:

496       569.39 Rulemaking authority.—The division shall adopt any  
497 rules necessary to administer and enforce the provisions of this  
498 part.

499       Section 20. Section 569.41, Florida Statutes, is created  
500 to read:

501        569.41 Selling, delivering, bartering, furnishing, or  
 502 giving nicotine products to persons under 18 years of age;  
 503 criminal penalties; defense.—

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

507        (2) Any person who violates subsection (1) commits a  
 508 misdemeanor of the second degree, punishable as provided in s.  
 509 775.082 or s. 775.083. However, any person who violates  
 510 subsection (1) for a second or subsequent time within 1 year  
 511 after the first violation commits a misdemeanor of the first  
 512 degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

521        (c) Such person carefully checked a driver license or an  
 522 identification card issued by the state or another state of the  
 523 United States, a passport, or a United States armed services  
 524 identification card presented by the buyer or recipient and  
 525 acted in good faith and in reliance upon the representation and

526 appearance of the buyer or recipient in the belief that the  
 527 buyer or recipient was 18 years of age or older.

528 Section 21. Section 569.42, Florida Statutes, is created  
 529 to read:

530 569.42 Possession, misrepresenting age or military service  
 531 to purchase, and purchase of nicotine products by persons under  
 532 18 years of age prohibited; penalties; jurisdiction; disposition  
 533 of fines.—

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

538 (a) For a first violation, 16 hours of community service  
 539 or, instead of community service, a \$25 fine. In addition, the  
 540 person must attend a school-approved anti-tobacco and anti-  
 541 nicotine program, if locally available; or

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

544  
 545 Any second or subsequent violation not within the 12-week period  
 546 after the first violation is punishable as provided for a first  
 547 violation.

548 (2) It is unlawful for any person under 18 years of age to  
 549 misrepresent his or her age or military service for the purpose  
 550 of inducing a dealer or an agent or employee of the dealer to

551 sell, give, barter, furnish, or deliver any nicotine product, or  
552 to purchase, or attempt to purchase, any nicotine product from a  
553 person or a vending machine. Any person under 18 years of age  
554 who violates this subsection commits a noncriminal violation as  
555 defined in s. 775.08(3), punishable by:

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

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

562  
563 Any second or subsequent violation not within the 12-week period  
564 after the first violation is punishable as provided for a first  
565 violation.

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

575 (4) A person charged with a noncriminal violation under

576 this section must appear before the county court or comply with  
577 the requirement for paying the fine. The court, after a hearing,  
578 shall make a determination as to whether the noncriminal  
579 violation was committed. If the court finds the violation was  
580 committed, it shall impose an appropriate penalty as specified  
581 in subsection (1) or subsection (2). A person who participates  
582 in community service shall be considered an employee of the  
583 state for the purpose of chapter 440, for the duration of such  
584 service.

585 (5) (a) If a person under 18 years of age is found by the  
586 court to have committed a noncriminal violation under this  
587 section and the person has failed to complete community service,  
588 pay the fine as required by paragraph (1) (a) or paragraph  
589 (2) (a), or attend a school-approved anti-tobacco and anti-  
590 nicotine program, if locally available, the court may direct the  
591 Department of Highway Safety and Motor Vehicles to withhold  
592 issuance of or suspend the driver license or driving privilege  
593 of that person for a period of 30 consecutive days.

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

601       (6) Eighty percent of all civil penalties received by a  
 602 county court under this section shall be remitted by the clerk  
 603 of the court to the Department of Revenue for transfer to the  
 604 Department of Education to provide for teacher training and for  
 605 research and evaluation to reduce and prevent the use of  
 606 nicotine products by children. The remaining 20 percent of civil  
 607 penalties received by a county court under this section shall  
 608 remain with the clerk of the county court to cover  
 609 administrative costs.

610       Section 22. Section 569.43, Florida Statutes, is created  
 611 to read:

612       569.43 Posting of a sign stating that the sale of nicotine  
 613 products to persons under 18 years of age is unlawful;  
 614 enforcement; penalty.-

615       (1) A dealer that sells nicotine products shall post a  
 616 clear and conspicuous sign in each place of business at which  
 617 such products are sold which substantially states the following:  
 618

619       THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING  
 620 DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST  
 621 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.  
 622

623       (2) The division shall make available to dealers of  
 624 nicotine products signs that meet the requirements of subsection  
 625 (1).

626 (3) Any dealer that sells nicotine products shall provide  
627 at the checkout counter in a location clearly visible to the  
628 dealer or the dealer's agent or employee instructional material  
629 in a calendar format or similar format to assist in determining  
630 whether a person is of legal age to purchase nicotine products.  
631 This point of sale material must contain substantially the  
632 following language:

633  
634 IF YOU WERE NOT BORN BEFORE THIS DATE  
635 (insert date and applicable year)  
636 YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
637 DISPENSING DEVICES.

638  
639 Upon approval by the division, in lieu of a calendar a dealer  
640 may use card readers, scanners, or other electronic or automated  
641 systems that can verify whether a person is of legal age to  
642 purchase nicotine products. Failure to comply with the  
643 provisions contained in this subsection shall result in  
644 imposition of administrative penalties as provided in s. 569.35.

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

647 (5) Any person who fails to comply with subsection (1)  
648 commits a misdemeanor of the second degree, punishable as  
649 provided in s. 775.082 or s. 775.083.

650 Section 23. Section 569.44, Florida Statutes, is created

651 to read:

652 569.44 Annual report.—The division shall report annually  
653 with written findings to the Legislature and the Governor by  
654 December 31, on the progress of implementing the enforcement  
655 provisions of this part. This must include, but is not limited  
656 to:

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

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

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

663 (4) The number of persons under age 18 cited for  
664 violations of s. 569.42 and sanctions imposed as a result of  
665 citation.

666 Section 24. Section 569.45, Florida Statutes, is created  
667 to read:

668 569.45 Mail order, Internet, and remote sales of nicotine  
669 products; age verification.—

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

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

673 (b) "Consumer" means a person in the state who comes into  
674 possession of any nicotine product who, at the time of  
675 possession, is not intending to sell or distribute the nicotine

676 product, or is a retailer.

677 (c) "Delivery sale" means any sale of nicotine products to  
678 a consumer in the state for which:

679 1. The consumer submits the order for the sale by  
680 telephonic or other voice transmission, mail, delivery service,  
681 or the Internet or other online service; or

682 2. The nicotine products are delivered by use of mail or a  
683 delivery service.

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

686 (e) "Legal minimum purchase age" means the minimum age at  
687 which an individual may legally purchase nicotine products in  
688 the state.

689 (f) "Retailer" means any person who is required to obtain  
690 a retail nicotine products dealer permit or a retail tobacco  
691 products dealer permit, as defined in s. 569.002.

692 (g) "Shipping container" means a container in which  
693 nicotine products are shipped in connection with a delivery  
694 sale.

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

699 (2) (a) A sale of nicotine products constituting a delivery  
700 sale under paragraph (1) (c) is a delivery sale regardless of

701 whether the person accepting the order for the delivery sale is  
702 located inside or outside the state.

703 (b) A retailer must obtain a retail nicotine products  
704 dealer permit or a retail tobacco products dealer permit, as  
705 defined in s. 569.002, from the division under the requirements  
706 of this chapter before accepting an order for a delivery sale.

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

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

711 1. The age verification requirements set forth in  
712 subsection (3).

713 2. The disclosure requirements set forth in subsection  
714 (4).

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

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

720 (a) Obtains from the person submitting the order a  
721 certification that includes:

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

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

725 a. Certifies the address and date of birth of the person;

726 and

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

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

731 (II) Selling nicotine products to individuals who are not  
732 adults; and

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

735 (b) Makes a good faith effort to verify the information  
736 contained in the certification provided by the individual under  
737 paragraph (a) against a commercially available database that may  
738 be reasonably relied upon for accurate age information or  
739 obtains a photocopy or other image of a valid government-issued  
740 identification card stating the date of birth or age of the  
741 individual.

742 (c) Provides to the individual, via electronic mail or  
743 other means, a notice meeting the requirements of subsection  
744 (4).

745 (d) If an order for nicotine products is made pursuant to  
746 an advertisement on the Internet, receives payment for the  
747 delivery sale from the consumer by a credit or debit card issued  
748 in the name of the consumer, or by personal or company check of  
749 the consumer.

750 (e) The person accepting the order for delivery sale shall

751 submit, to each credit card acquiring company with which the  
752 person has credit card sales, identification information in an  
753 appropriate form and format so that the words "nicotine product"  
754 may be printed in the purchaser's credit card statement when a  
755 purchase of a nicotine product is made by credit card payment.

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

762  
763 In addition to the requirements of this subsection, a person  
764 accepting an order for a delivery sale may request that a  
765 consumer provide an electronic mail address.

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

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

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

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

775 (a) Include as part of the shipping documents, in a clear

776 and conspicuous manner, the following statement: "Nicotine  
777 Products: Florida law prohibits shipping to individuals under 18  
778 years of age."

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

781 1. The individual submitting the order for the delivery  
782 sale or another adult who resides at the individual's address to  
783 sign his or her name to accept delivery of the shipping  
784 container. Proof of the legal minimum purchase age of the  
785 individual accepting delivery is required only if the individual  
786 appears to be under 27 years of age.

787 2. Proof that the individual is either the addressee or  
788 the adult designated by the addressee, in the form of a valid,  
789 government-issued identification card bearing a photograph of  
790 the individual who signs to accept delivery of the shipping  
791 container.

792  
793 If the person accepting a purchase order for a delivery sale  
794 delivers the nicotine products without using a delivery service,  
795 the person must comply with all of the requirements of this  
796 section which apply to a delivery service. Any failure to comply  
797 with a requirement of this section constitutes a violation  
798 thereof.

799 (6) This section does not apply to delivery sales of  
800 nicotine products to a retail nicotine products dealer or a

801 retail tobacco products dealer, as defined in s. 569.002.

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

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

809 Section 25. Subsection (1) of section 768.73, Florida  
 810 Statutes, is amended to read:

811 768.73 Punitive damages; limitation.—

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

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

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

818 (b) Where the fact finder determines that the wrongful  
 819 conduct proven under this section was motivated solely by  
 820 unreasonable financial gain and determines that the unreasonably  
 821 dangerous nature of the conduct, together with the high  
 822 likelihood of injury resulting from the conduct, was actually  
 823 known by the managing agent, director, officer, or other person  
 824 responsible for making policy decisions on behalf of the  
 825 defendant, it may award an amount of punitive damages not to

826 exceed the greater of:

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

830 2. The sum of \$2 million.

831 (c) Where the fact finder determines that the wrongful  
832 conduct proven under this section was committed by a  
833 manufacturer of a vapor-generating electronic device as defined  
834 in s. 386.203, or a manufacturer of a nicotine product or  
835 nicotine dispensing device as defined in s. 569.31, it may award  
836 against such manufacturer an amount of punitive damages not to  
837 exceed the greater of:

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

841 2. The sum of \$2 million.

842 (d)-(e) Where the fact finder determines that at the time  
843 of injury the defendant had a specific intent to harm the  
844 claimant and determines that the defendant's conduct did in fact  
845 harm the claimant, there shall be no cap on punitive damages.

846 (e)-(d) This subsection is not intended to prohibit an  
847 appropriate court from exercising its jurisdiction under s.  
848 768.74 in determining the reasonableness of an award of punitive  
849 damages that is less than three times the amount of compensatory  
850 damages.

CS/HB 7089

2020

851           Section 26. Section 877.112, Florida Statutes, is  
852 repealed.

853           Section 27. This act shall take effect October 1, 2020.