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1 A bill to be entitled

2 An act relating to alternative nicotine products;
3 amending s. 569.002, F.S.; providing and revising
4 definitions; amending s. 569.0075, F.S.; prohibiting
5 the gift of sample alternative nicotine products to
6 persons younger than 18 years of age; amending s.
7 569.101, F.S.; prohibiting the sale, delivery,
8 bartering, furnishing, or giving of alternative
9 nicotine products to persons younger than 18 years of
10 age; amending s. 569.11, F.S.; prohibiting a person
11 who is younger than 18 years of age from buying,
12 possessing, or misrepresenting his or her age in order
13 to buy alternative nicotine products; amending s.
14 569.14, F.S.; revising the contents of signs that must
15 be displayed at locations where alternative nicotine
16 products are available for purchase; reenacting s.
17 322.056(2) and (3), F.S., relating to mandatory driver
18 license revocation or suspension for persons younger
19 than 18 years of age who commit certain offenses, to
20 incorporate changes made by the act to s. 569.11,
21 F.S., in a reference thereto; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 569.002, Florida Statutes, is amended

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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to read:

569.002 Definitions.—

(1) As used in this chapter, the term:

(a) "Alternative nicotine product" means a product that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, and inhaling. The term includes an electronic cigarette, but does not include any of the following:

1. Tobacco products.

2. A product that is a drug as defined in 21 U.S.C. s. 321(g)(1).

3. A product that is a device as defined in 21 U.S.C. s. 321(h).

4. A combination product that is a device regulated under 21 U.S.C. s. 353(g).

~~(1) "Dealer" is synonymous with the term "retail tobacco products dealer."~~

~~(b)(2)~~ "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(c) "Electronic cigarette" means a device or product that produces a vapor that delivers nicotine or other substances to a person inhaling from the device to simulate smoking and that is offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or

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other similar device or product.

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

(d)(4) "Retail tobacco products dealer" or "dealer" means the holder of a retail tobacco products dealer permit.

(e)(5) "Retail tobacco products dealer permit" or "permit" means a permit issued by the division pursuant to s. 569.003.

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

(2)(7) The term "Any person under the age of 18" does not include a ~~any~~ person under the age of 18 who:

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

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

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

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

Section 2. Section 569.0075, Florida Statutes, is amended to read:

569.0075 Sample gifts of ~~Gift of sample~~ tobacco products

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79 | or alternative nicotine products prohibited.—The gift of sample
80 | tobacco products or alternative nicotine products to a ~~any~~
81 | person under the age of 18 by an entity licensed or permitted
82 | ~~under the provisions of~~ chapter 210 or this chapter, or by an
83 | employee of such entity, is prohibited and is punishable as
84 | provided in s. 569.101.

85 | Section 3. Section 569.101, Florida Statutes, is amended
86 | to read:

87 | 569.101 Selling, delivering, bartering, furnishing, or
88 | giving tobacco products or alternative nicotine products to
89 | persons under 18 years of age; criminal penalties; defense.—

90 | (1) It is unlawful to sell, deliver, barter, furnish, or
91 | give, directly or indirectly, to a ~~any~~ person who is under 18
92 | years of age, any tobacco product or alternative nicotine
93 | product.

94 | (2) A ~~Any~~ person who violates subsection (1) commits a
95 | misdemeanor of the second degree, punishable as provided in s.
96 | 775.082 or s. 775.083. However, a ~~any~~ person who violates
97 | subsection (1) for a second or subsequent time within 1 year of
98 | the first violation, commits a misdemeanor of the first degree,
99 | punishable as provided in s. 775.082 or s. 775.083.

100 | (3) A person charged with a violation of subsection (1)
101 | has a complete defense if, at the time the tobacco product or
102 | alternative nicotine product was sold, delivered, bartered,
103 | furnished, or given:

104 | (a) The buyer or recipient falsely evidenced that she or

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he was 18 years of age or older;

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

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

Section 4. Section 569.11, Florida Statutes, is amended to read:

569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products or alternative nicotine products by persons under 18 years of age prohibited; ~~penalties; jurisdiction; disposition of fines.~~

(1) It is unlawful for a ~~any~~ person under 18 years of age to knowingly possess any tobacco product or alternative nicotine product. A ~~Any~~ person under 18 years of age who violates ~~the provisions of~~ this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service ~~or, instead of community service,~~ a \$25 fine. ~~In addition,~~ The person must also attend a school-approved anti-tobacco program, if locally available;

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(b) For a second violation within 12 weeks of the first violation, a \$25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver ~~driver's~~ license or driving privilege, as provided in s. 322.056.

A ~~Any~~ second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

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

(a) For a first violation, 16 hours of community service ~~or, instead of community service,~~ a \$25 fine. ~~and, in addition,~~ The person must also attend a school-approved anti-tobacco program, if available;

(b) For a second violation within 12 weeks of the first

violation, a \$25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver ~~driver's~~ license or driving privilege, as provided in s. 322.056.

A Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

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

(4) A person charged with a noncriminal violation under this section must appear before the county court or pay ~~comply with the requirement for~~ paying the fine. The court, after a hearing, shall determine ~~make a determination as to~~ whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who

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183 participates in community service is ~~shall be~~ considered an
184 employee of the state for the purpose of chapter 440~~7~~ for the
185 duration of such service.

186 (5)(a) If a person ~~under 18 years of age~~ is found by the
187 court to have committed a noncriminal violation under this
188 section and that person has failed to:

189 (a) Complete community service, pay the fine as required
190 by paragraph (1)(a) or paragraph (2)(a), or attend a school-
191 approved anti-tobacco program, if locally available, the court
192 must direct the Department of Highway Safety and Motor Vehicles
193 to withhold issuance of or suspend the driver ~~driver's~~ license
194 or driving privilege of that person for ~~a period of~~ 30
195 consecutive days.

196 (b) ~~If a person under 18 years of age is found by the~~
197 ~~court to have committed a noncriminal violation under this~~
198 ~~section and that person has failed to~~ Pay the applicable fine as
199 required by paragraph (1)(b) or paragraph (2)(b), the court must
200 direct the Department of Highway Safety and Motor Vehicles to
201 withhold issuance of or suspend the driver ~~driver's~~ license or
202 driving privilege of that person for ~~a period of~~ 45 consecutive
203 days.

204 (6) Eighty percent of all civil penalties received by a
205 county court pursuant to this section shall be remitted by the
206 clerk of the court to the Department of Revenue for transfer to
207 the Department of Education to provide for teacher training and
208 for research and evaluation to reduce and prevent the use of

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tobacco products by minors ~~children~~. The remaining 20 percent ~~of~~
~~civil penalties received by a county court pursuant to this~~
~~section~~ shall remain with the clerk of the county court to cover
administrative costs.

Section 5. Section 569.14, Florida Statutes, is amended to
read:

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

(1) A ~~Any~~ dealer that sells tobacco products or
alternative nicotine products shall post a clear and conspicuous
sign in each place of business where such products are sold
which substantially states the following:

THE SALE OF TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE
PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST
FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) The division shall make signs available to dealers of
tobacco products or alternative nicotine products which ~~signs~~
~~that~~ meet the requirements of subsection (1).

(3) A ~~Any~~ dealer that sells tobacco products or
alternative nicotine products shall provide at the checkout
counter in a location clearly visible to the dealer, the
dealer's agent, or employee, instructional material in a
calendar format or similar format to assist in determining

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whether a person is of legal age to purchase tobacco products or
alternative nicotine products. This point of sale material must
 contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
 (insert date and applicable year)
 YOU CANNOT BUY TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE
PRODUCTS.

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

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

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

Section 6. For the purpose of incorporating the amendments
 made by this act to section 569.11, Florida Statutes, in a
 reference thereto, subsections (2) and (3) of section 322.056,
 Florida Statutes, are reenacted to read:

322.056 Mandatory revocation or suspension of, or delay of

261 eligibility for, driver's license for persons under age 18 found
262 guilty of certain alcohol, drug, or tobacco offenses;
263 prohibition.—

264 (2) If a person under 18 years of age is found by the
265 court to have committed a noncriminal violation under s. 569.11
266 and that person has failed to comply with the procedures
267 established in that section by failing to fulfill community
268 service requirements, failing to pay the applicable fine, or
269 failing to attend a locally available school-approved anti-
270 tobacco program, and:

271 (a) The person is eligible by reason of age for a driver's
272 license or driving privilege, the court shall direct the
273 department to revoke or to withhold issuance of his or her
274 driver's license or driving privilege as follows:

275 1. For the first violation, for 30 days.

276 2. For the second violation within 12 weeks of the first
277 violation, for 45 days.

278 (b) The person's driver's license or driving privilege is
279 under suspension or revocation for any reason, the court shall
280 direct the department to extend the period of suspension or
281 revocation by an additional period as follows:

282 1. For the first violation, for 30 days.

283 2. For the second violation within 12 weeks of the first
284 violation, for 45 days.

285 (c) The person is ineligible by reason of age for a
286 driver's license or driving privilege, the court shall direct

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the department to withhold issuance of his or her driver's license or driving privilege as follows:

1. For the first violation, for 30 days.

2. For the second violation within 12 weeks of the first violation, for 45 days.

Any second violation of s. 569.11 not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.

(3) If a person under 18 years of age is found by the court to have committed a third violation of s. 569.11 within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to suspend or withhold issuance of his or her driver's license or driving privilege for 60 consecutive days. Any third violation of s. 569.11 not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in subsection (2).

Section 7. This act shall take effect July 1, 2014.