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## The 2023 Florida Statutes

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ALCOHOLIC BEVERAGES AND TOBACCO TOBACCO AND NICOTINE PRODUCTS

### CHAPTER 569

### TOBACCO AND NICOTINE PRODUCTS

#### PART I

#### TOBACCO PRODUCTS

(ss. 569.002-569.23)

#### PART II

#### NICOTINE PRODUCTS

(ss. 569.31-569.45)

#### PART I

#### TOBACCO PRODUCTS

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**569.002 Definitions.**—As used in this part, the term:

- (1) “Dealer” is synonymous with the term “retail tobacco products dealer.”

(2) “Division” means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(3) “Nicotine product” has the same meaning as provided in s. 569.31(4).

(4) “Nicotine dispensing device” has the same meaning as provided in s. 569.31(3).

(5) “Permit” is synonymous with the term “retail tobacco products dealer permit.”

(6) “Retail tobacco products dealer” means the holder of a retail tobacco products dealer permit.

(7) “Retail tobacco products dealer permit” means a permit issued by the division pursuant to s. 569.003.

(8) “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.

(9) “Any person under the age of 21” does not include any person under the age of 21 who:

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

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

**History.**—s. 2, ch. 92-285; s. 222, ch. 94-218; s. 4, ch. 97-162; s. 1, ch. 98-172; s. 6, ch. 2021-14.

**569.0025 Preemption.**—The establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, tobacco products is preempted to the state.

**History.**—s. 7, ch. 2021-14.

**569.003 Retail tobacco products dealer permits; application; qualifications; fees; renewal; duplicates.**—

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

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant’s place of business within the state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in tobacco products within this state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by any person authorized by the corporation to sign the application, together with the written evidence of this authority. The application must be accompanied by the annual permit fee prescribed by the division.

(c) Permits shall be issued annually, upon payment of the annual permit fee prescribed by the division. The division shall fix the fee in an amount sufficient to meet the costs incurred by it in carrying out its permitting, enforcement, and administrative responsibilities under this part, but the fee may not exceed \$50. The proceeds of the fee shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund.

(d) The holder of a permit may renew the permit each year, on or before January 15, upon payment of the annual permit fee. A dealer that does not timely renew its permit must pay a delinquent renewal fee of \$5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer’s permit. The division shall establish, by rule, a renewal procedure that, to the greatest extent feasible, combines the application and permitting procedure for permits with the application and licensing system for alcoholic beverages.

(e) The division may not grant an exemption from the permit fees prescribed in this subsection for any applicant.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked; to any corporation an officer of which has had his or her permit revoked; or to any person who is or has been an officer of a corporation the permit of which has been revoked. Any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this section shall be revoked by the division.

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

(4) If a permit has been destroyed or lost, the dealer may apply to the division for the issuance of a duplicate permit. The division shall issue a duplicate permit upon payment of a \$15 fee, which the division shall deposit into the Alcoholic Beverage and Tobacco Trust Fund.

**History.**—s. 3, ch. 92-285; s. 884, ch. 97-103; s. 7, ch. 97-162; s. 8, ch. 2021-14.

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

**History.**—s. 4, ch. 92-285; s. 8, ch. 97-162; s. 9, ch. 2021-14.

**569.005 Operating without a retail tobacco products dealer permit; penalty.**—

(1) It is unlawful for a person, firm, association, or corporation to deal, at retail, in tobacco products, in any manner, or to allow a tobacco products vending machine to be located on its premises, without having a retail tobacco products dealer permit as required by s. 569.003. A person who violates this section is guilty of a noncriminal violation, punishable by a fine of not more than \$500.

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

(3) A person cited for an infraction under this section may:

- (a) Post a \$500 bond; or
- (b) Sign and accept the citation indicating a promise to appear.

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

- 1. Pay the \$500 fine, either by mail or in person, within 10 days after receiving the citation; or
- 2. If that person has posted a bond, forfeit the bond by not appearing at the scheduled hearing.

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

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

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

**History.**—s. 5, ch. 92-285.

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

**History.**—s. 6, ch. 92-285; s. 9, ch. 97-162; s. 10, ch. 2021-14.

**569.007 Sale or delivery of tobacco products; restrictions.**—

(1) In order to prevent persons under 21 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

- (a) When under the direct control or line of sight of the dealer or the dealer’s agent or employee; or
- (b) Sales from a vending machine are prohibited under the provisions of paragraph (1)(a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer’s agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled and a mechanism to ensure that only one tobacco product is dispensed at a time.

(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 21 years of age on the licensed premises.

(3) The provisions of subsection (1) shall not apply to the sale or delivery of cigars and pipe tobacco.

(4) A dealer or a dealer’s agent or employee must require proof of age of a purchaser of a tobacco product before selling the product to that person, unless the purchaser appears to be 30 years of age or older.

(5) A wholesale dealer or distributing agent, as those terms are defined in s. 210.01, or a distributor, as defined in s. 210.25, may sell or deliver tobacco products only to dealers who have permits.

**History.**—s. 7, ch. 92-285; s. 53, ch. 95-144; s. 11, ch. 97-162; s. 11, ch. 2021-14.

**569.0073 Special provisions; smoking pipes and smoking devices.**—

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

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

(b)1. Derives at least 75 percent of its annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or

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

(2) The following smoking pipes and smoking devices are subject to the provisions of this section:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls.

(b) Water pipes.

(c) Carburetion tubes and devices.

(d) Chamber pipes.

(e) Carburetor pipes.

(f) Electric pipes.

(g) Air-driven pipes.

(h) Chillums.

(i) Bongs.

(j) Ice pipes or chillers.

(3) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 2010-118.

**569.0075 Gift of sample tobacco products prohibited.**—The gift of sample tobacco products to any person under the age of 21 by an entity licensed or permitted under the provisions of chapter 210 or this part, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.101.

**History.**—s. 12, ch. 97-162; s. 12, ch. 2021-14.

**569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.**—

(1) The Legislature intends to prevent the sale of tobacco products to persons under 21 years of age and to encourage retail tobacco products dealers to comply with responsible practices in accordance with this section.

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

(a) Laws covering the sale of tobacco products.

(b) Methods of recognizing and handling customers under 21 years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 years of age.

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

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 21 years of age if the following conditions are met:

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

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

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

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

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

(5) Dealers shall exercise diligence in the management and supervision of their premises and in the supervision and training of their employees, agents, or servants. In proceedings to impose penalties under s. 569.006, proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of s. 569.101 during a 180-day period shall be prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

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

**History.**—s. 8, ch. 92-285; s. 13, ch. 97-162; s. 13, ch. 2021-14.

**569.009 Rulemaking authority.**—The division shall adopt any rules necessary to administer and enforce the provisions of this part.

**History.**—s. 9, ch. 92-285; s. 14, ch. 97-162; s. 14, ch. 2021-14.

**569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 years of age; criminal penalties; defense.—**

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any tobacco product.

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

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

- (a) The buyer or recipient falsely evidenced that she or he was 21 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 21 years of age or older; and
- (c) Such person carefully checked a driver 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 21 years of age or older.

**History.**—ss. 1, 2, ch. 5716, 1907; RGS 5530; CGL 7696; s. 1083, ch. 71-136; s. 1, ch. 85-100; s. 218, ch. 91-224; s. 11, ch. 92-285; s. 1388, ch. 97-102; s. 3, ch. 97-162; s. 15, ch. 2021-14.

**Note.**—Former s. 859.06.

**569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 21 years of age prohibited; penalties; jurisdiction; disposition of fines.—**

(1) It is unlawful for any person under 21 years of age to knowingly possess any tobacco product. Any person under 21 years of age who violates 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 attend a school-approved anti-tobacco program, if locally available; or
- (b) For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.

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

(2) It is unlawful for any person under 21 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 to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 21 years of age who violates 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 attend a school-approved anti-tobacco program, if available; or
- (b) For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.

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

(3) Any person under 21 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 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 comply with the requirement for paying the fine. The court, after a hearing, shall 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 participates in community service shall be considered an employee of the state for the purpose of chapter 440 for the duration of such service.

(5)(a) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

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

**History.**—s. 5, ch. 97-162; s. 3, ch. 99-156; s. 9, ch. 99-259; s. 34, ch. 2001-63; s. 30, ch. 2001-122; s. 27, ch. 2019-167; s. 16, ch. 2021-14.

#### **569.12 Jurisdiction; tobacco product and nicotine product enforcement officers or agents; enforcement.**

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

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

(b) A tobacco product and nicotine product enforcement officer is authorized to issue a citation to a person under the age of 21 when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212, s. 569.11, or s. 569.42.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 21 when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11 or s. 569.42.

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

- (a) The date and time of issuance.
- (b) The name and address of the person to whom the citation is issued.
- (c) The date and time the civil infraction was committed.
- (d) The facts constituting reasonable cause.
- (e) The number of the Florida statute violated.
- (f) The name and authority of the citing officer.



**569.21 Expenditure of tobacco settlement proceeds.**—The following guidelines shall be applied to the expenditure of all funds paid to the State of Florida as a result of litigation entitled *State of Florida et al. v. American Tobacco Company et al.*, No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County:

- (1) The Legislature asserts its rights to appropriate all funds paid or payable to the state through the tobacco settlement. Before any funds are released, the Legislature must approve all program and funding proposals.
- (2) A trust fund should be created solely for the purpose of receiving and managing settlement funds, and a full and complete record of all budget and expenditure actions should be maintained.
- (3) Administrative costs associated with programs and providers that receive funds from the tobacco settlement should be set at a reasonable level, consistent with best management practices.
- (4) Local law enforcement agencies, businesses, and school districts should be involved in enforcement efforts as appropriate to the mission of each organization.
- (5) Funds received from the tobacco settlement may not be used for advertising that includes the name, voice, or likeness of any elected or appointed public official.
- (6) Greater emphasis should be placed on funding education, training, and enforcement programs than is placed on the funding of advertising.
- (7) County health departments must administer funds provided to each local coalition that is not specifically granted an exemption by the Legislature. Exemptions from requirements to administer coalition programs by county health departments shall be limited to established administrative entities that meet a test of several criteria established by the Department of Health and may not include provider agencies that could receive funding from the settlement.
- (8) Programs which raise matching funds should be maximized in order to get the greatest leverage of state funds.
- (9) Grant and contract processes should be competitive and objective.
- (10) Requests for information or for proposals should emphasize that performance measures will be required for all contracts and grants.
- (11) A substantial portion of the program should be character-based and focused on rewarding appropriate values and behavior in youth.
- (12) Needs of the minority youth community in this state should be addressed.

**History.**—s. 2, ch. 98-63.

**569.215 Confidential records relating to tobacco settlement agreement.**—

- (1) Proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in furtherance of such agency's statutory duties, notwithstanding the provisions of this section. Proprietary confidential business information received under this section shall not retain its confidential and exempt status if that information is made public, including publicizing such information in a Securities and Exchange Commission filing, an annual financial statement, or other document or means.
- (2) As used in this section, the term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by a tobacco company that is a signatory to the settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, is intended to be and is treated by a tobacco company as private in that the disclosure of the information would cause harm to the company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an

order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

- (a) Trade secrets as defined in s. 688.002.
- (b) Information in a Form 10-K that is confidential pursuant to an order of the Division of Corporation Finance of the Securities and Exchange Commission.
- (c) Internal auditing control policies and procedures and reports of internal auditors.
- (d) Financial operating and marketing information prepared in the ordinary course of business, the disclosure of which could impair the competitive business of the provider of information.
- (e) Financial statements, which consist of balance sheets, statements of income and cash flows, and notes related thereto, of any subsidiary that is part of a consolidated group and engaged in the production or sale of tobacco products.
- (f) Report letters from independent auditors relating to domestic operating company income.
- (g) Analyses of specific items of revenue and expense included in operating profit and extraordinary items. As used in this paragraph, the term “extraordinary items” consists of one-time tobacco litigation settlement costs and restructuring charges.
- (h) Working papers, schedules, analyses, and reconciliations prepared by company personnel for the purpose of clarifying the disclosures of domestic tobacco revenues and operating profit contained in financial statements or other information related to the sale or production of tobacco products.

History.—s. 1, ch. 2001-136; s. 735, ch. 2003-261; s. 1, ch. 2006-160.

**569.23 Security requirements for tobacco settlement agreement signatories, successors, parents, and affiliates.—**

(1) As used in this section, the term “tobacco settlement agreement” means any settlement agreement, as amended, entered into by the state and one or more cigarette manufacturers in settlement of *State of Florida v. American Tobacco Co.*, No. 95-1466AH (Fla. 15th Cir. Ct.). As used in this section, the term “security” means supersedeas bonds, other surety permitted by Florida law, or cash.

(2) In any civil action involving a signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement, the security to be furnished during the pendency of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court, of any judgment in such litigation shall be set pursuant to applicable laws or court rules, except that the total cumulative value of all security required to stay the execution of the judgment may not exceed \$100 million for all appellants collectively, regardless of the total value of the judgment.

(3)(a)1. In civil actions against a signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement brought by or on behalf of persons who claim or have been determined to be members of a former class action that was decertified in whole or in part, the trial courts shall automatically stay the execution of any judgment in any such actions during the pendency of all appeals or discretionary appellate reviews of such judgment in Florida courts, upon provision of security as required in this paragraph. All security shall be provided through the posting with or payment into the registry of the clerk of the Supreme Court.

2. The total amount of security that must be provided for all appellants collectively with regard to a single judgment is equal to the lesser of the amount of the judgment to be stayed or the amount of security per judgment required based on the following tiers of judgments on appeal in the courts of this state at the time the security is provided:

TIER— NUMBER OF JUDGMENTS	AMOUNT OF SECURITY PER JUDGMENT	MAXIMUM TOTAL ALL SECURITY
1-40	\$5,000,000	\$200,000,000
41-80	\$2,500,000	\$200,000,000

TIER— NUMBER OF JUDGMENTS	AMOUNT OF SECURITY PER JUDGMENT	MAXIMUM TOTAL ALL SECURITY
81-100	\$2,000,000	\$200,000,000
101-150	\$1,333,333	\$199,999,950
151-200	\$1,000,000	\$200,000,000
201-300	\$666,667	\$200,000,100
301-500	\$400,000	\$200,000,000
501-1,000	\$200,000	\$200,000,000
1,001-2,000	\$100,000	\$200,000,000
2,001-3,000	\$66,667	\$200,001,000

3. In cases having multiple defendants, an individual appellant shall provide security in proportion to the percent or amount of liability specifically allocated against that appellant in the judgment, or, if liability is not specifically allocated in the judgment, for a share of the unallocated portion of the judgment determined by dividing the unallocated portion of the judgment equally among all defendants against whom the judgment is entered. Once an appellant has provided its required security with respect to a judgment, that appellant is entitled to a stay of that judgment regardless of whether other defendants in that case have provided the security required of them.

4. When the number of judgments on appeal changes so that the total is within a higher or lower tier, the amount of security required in each case shall change by operation of law, upon notice provided by any party to all other parties and upon deposit within 30 days after notice of any additional security required hereunder, from the amount of security previously posted to an amount consistent with the statutory appeal bond rights prescribed in this paragraph. When the amount of security on deposit is changed pursuant to this subparagraph, the security shall be modified as follows:

a. If the security on deposit is in the form of a supersedeas bond or other surety, the appellant shall replace or supplement that supersedeas bond or other surety with security in the new amount as required by this paragraph.

b. If the security on deposit is in the form of cash, the clerk of the Supreme Court shall, as appropriate:

(I) Upon the request of the appellant and notice to all appellees affected, refund to the appellant the difference between the amount of security on deposit and the reduced amount of security required or hold the difference as a credit against future security to be posted by that appellant; or

(II) Record any additional cash provided by the appellant.

(b)1. In any action subject to this subsection, if there is no appeal or discretionary appellate review pending in a Florida court and an appellant exercises its right to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court, the trial court shall automatically stay the execution of the judgment in any such action during the pendency of the appeal, upon provision of security as required in this paragraph. All security shall be provided through the posting with or payment into the registry of the clerk of the Supreme Court of this state.

2. The amount of security shall be equal to the lesser of the amount of the judgment to be stayed or three times the security required to stay the execution of a judgment during all appellate review in Florida courts at the time appellate review is sought under this paragraph.

(c) A claim may not be made against the security provided by an appellant unless an appellant fails to pay a judgment in a case covered by this subsection within 30 days after the judgment becomes final. For purposes of this subsection, a judgment is “final” following the completion of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court. If an appellant fails to pay a judgment within such time period, the security for that judgment provided by that appellant shall be available to satisfy the judgment in favor of the appellee. Upon satisfaction of the judgment in any case, the clerk of the Supreme Court may refund any

security on deposit with respect to that case to the appellant upon an order from the trial court confirming satisfaction of the judgment.

(d) The clerk of the Supreme Court shall collect fees for receipt of deposits under this subsection as authorized by ss. 28.231 and 28.24(11). In addition, for as long as any cash remains on deposit with the clerk pursuant to this subsection, the clerk of the Supreme Court is entitled to regularly receive as an additional fee the net investment income earned thereon. The clerk shall use the services of the Chief Financial Officer, as needed, for the custody and management of all bonds, other surety, or cash posted or deposited with the clerk. All fees collected pursuant to this subsection shall be deposited in the State Courts Revenue Trust Fund for use as specified by law.

(e)1. It is the intent of the Legislature that the clerk of the Supreme Court maintain a record of the number of appeals in Florida courts and all security posted with or paid into the registry of the Supreme Court under this subsection. It is further the intent of the Legislature that the clerk regularly update the records to reflect any revisions in the amount of previously posted or paid security.

2. A signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement shall maintain on a continuing basis an accounting of security provided under this subsection, including, but not limited to, the specific amount of security provided with respect to each specific judgment and the date on which it was provided, the amount and date of any adjustments upward or downward to security provided and the basis for the adjustment, and the date of any final disposition related to security. By July 15 of each year, the entity shall provide to the clerk of the Supreme Court an updated copy of the accounting reflecting activity through the immediately preceding June 30, in a manner prescribed by the Supreme Court. A verified copy of such accounting shall also be filed in each circuit court case in which each such judgment was entered.

3. By August 1, 2009, a signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement shall provide to the clerk of the Supreme Court a list of all civil actions, as of the date the list is provided and identified by case name and court case number, against the signatory, or a successor, parent, or affiliate of a signatory, brought by or on behalf of persons who claim or have been determined to be members of a former class action that was decertified in whole or in part. A signatory, or a successor, parent, or affiliate of a signatory, shall provide to the clerk the same information on any additional actions filed within 60 days after the additional action is joined.

(4) Notwithstanding subsections (2) and (3), if, after notice and hearing, a plaintiff proves by a preponderance of the evidence that a defendant who posted or paid security under this section is purposefully dissipating assets outside the ordinary course of business to avoid payment of the judgment, the court may enter necessary orders as to that defendant to protect the plaintiff, including an order that the security be posted or paid in an amount up to the full amount of the judgment against that defendant.

(5) This section does not apply to any past, present, or future action brought by the State of Florida against one or more signatories to the settlement agreement.

**History.**—s. 1, ch. 2003-133; s. 1, ch. 2009-188; s. 16, ch. 2011-61; s. 24, ch. 2021-116.

## **PART II NICOTINE PRODUCTS**

569.31 Definitions.

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569.44 Annual report.

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

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

(1) “Dealer” is synonymous with the term “retail nicotine products dealer.”

(2) “Division” means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(3) “Nicotine dispensing device” means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

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

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

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

(c) Product that contains incidental nicotine.

(5) “Permit” is synonymous with the term “retail nicotine products dealer permit.”

(6) “Retail nicotine products dealer” means the holder of a retail nicotine products dealer permit.

(7) “Retail nicotine products dealer permit” means a permit issued by the division under s. 569.32.

(8) “Self-service merchandising” means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer’s owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(9) “Any person under the age of 21” does not include any person under the age of 21 who:

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

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

*History.*—s. 20, ch. 2021-14.

**569.315 Preemption.**—The establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, nicotine products is preempted to the state.

*History.*—s. 21, ch. 2021-14.

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

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products within the state, or to allow a nicotine products vending machine to be located on its premises in the state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products are sold both

over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within the state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products within the state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

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

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

History.—s. 22, ch. 2021-14.

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

History.—s. 23, ch. 2021-14.

**569.34 Operating without a retail nicotine products dealer permit; penalty.**—

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

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine products within the state, or allow a nicotine products vending machine to be located on its premises in the state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a nicotine products vending machine to be located on its premises in the state, is subject to, and must be in compliance with, this part.

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

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

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

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

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

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

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

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

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

*History.*—s. 24, ch. 2021-14.

**569.35 Retail nicotine product dealers; administrative penalties.**—The division may suspend or revoke the permit of a dealer, including the retail tobacco products dealer permit of a retail tobacco products dealer as defined in s. 569.002(4), upon sufficient cause appearing of the violation of any of the provisions of this part, by a dealer, or by a dealer’s agent or employee. The division may also assess and accept an administrative fine of up to \$1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer’s compliance with terms the division considers appropriate.

*History.*—s. 25, ch. 2021-14.

**569.37 Sale or delivery of nicotine products; restrictions.**—

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

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

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

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

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

(3) The provisions of subsections (1) and (2) shall not apply to an establishment that prohibits persons under 21 years of age on the licensed premises.

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

*History.*—s. 26, ch. 2021-14.

**569.38 Gift of sample nicotine products and nicotine dispensing devices.**—The gift of sample nicotine products to any person under the age of 21 by an entity permitted under this part, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.41.

*History.*—s. 27, ch. 2021-14.

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

(1) It is the intent of the Legislature to prevent the sale of nicotine products to persons under 21 years of age and to encourage retail nicotine products dealers to comply with responsible practices in accordance with this section.

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

- (a) Laws covering the sale of nicotine products.
- (b) Methods of recognizing and handling customers under 21 years of age.
- (c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 years of age.
- (d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

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

- (a) The dealer is qualified as a responsible dealer under this section.
- (b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.
- (c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- (d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

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

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

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

*History.*—s. 28, ch. 2021-14.

**569.39 Rulemaking authority.**—The division shall adopt rules to administer and enforce this part.

*History.*—s. 29, ch. 2021-14.

**569.41 Selling, delivering, bartering, furnishing, or giving nicotine products to persons under 21 years of age; criminal penalties; defense.**—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any nicotine product.

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

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

- (a) The buyer or recipient falsely evidenced that she or he was 21 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 21 years of age or older; and
- (c) Such person carefully checked a driver license or an identification card issued by the 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 21 years of age or older.

History.—s. 30, ch. 2021-14.

**569.42 Possession, misrepresenting age or military service to purchase, and purchase of nicotine products by persons under 21 years of age prohibited; penalties; jurisdiction; disposition of fines.—**

(1) It is unlawful for any person under 21 years of age to knowingly possess any nicotine product. Any person under 21 years of age who violates 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 attend a school-approved anti-tobacco and anti-nicotine program, if locally available; or
- (b) For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.

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

(2) It is unlawful for any person under 21 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 nicotine product, or to purchase, or attempt to purchase, any nicotine product from a person or a vending machine. Any person under 21 years of age who violates this subsection commits a noncriminal violation as defined 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 attend a school-approved anti-tobacco and anti-nicotine program, if available; or
- (b) For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.

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

(3) Any person under 21 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 comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and anti-nicotine 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 comply with the requirement for paying the fine. The court, after a hearing, shall 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 participates in community service shall be considered an employee of the state for the purpose of chapter 440 for the duration of such service.

(5)(a) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and the person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco and anti-nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court under this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of nicotine products by children. The



(c) “Delivery service” means any person engaged in the commercial delivery of letters, packages, or other containers.

(d) “Legal minimum purchase age” means the minimum age at which an individual may legally purchase nicotine products in the state.

(e) “Retailer” means any person who is required to obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in s. 569.002.

(f) “Shipping container” means a container in which nicotine products are shipped in connection with a delivery sale.

(g) “Shipping document” means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.

(2)(a) A sale of nicotine products constituting a delivery sale under paragraph (1)(b) is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside the state.

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

(c) A person may not make a delivery sale of nicotine products to any individual who is not 21 years of age or older.

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

1. The age verification requirements set forth in subsection (3).
2. The disclosure requirements set forth in subsection (4).
3. The shipping requirements set forth in subsection (5).

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

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

1. Reliable confirmation that the person is 21 years of age or older; and
2. A statement signed by the person in writing and under penalty of perjury which:

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

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

- (I) Signing another person’s name to the certification;
- (II) Selling nicotine products to individuals who are not 21 years of age or older; and
- (III) Purchasing nicotine products, if the person making the purchase is not 21 years of age or older.

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

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

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

(e) Submits, to each credit card acquiring company with which the person has credit card sales, identification information in an appropriate form and format so that the words “nicotine product” may be printed in the purchaser’s credit card statement when a purchase of a nicotine product is made by credit card payment.

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

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

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

(a) Illegal if made to individuals who are not 21 years of age or older.

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

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

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age.”

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

1. The individual submitting the order for the delivery sale or another person 21 years of age or older who resides at the individual’s address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 years of age.

2. Proof that the individual is either the addressee or the individual who is 21 years of age or older designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

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

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

(7) An individual 21 years of age or older who knowingly violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

**History.**—s. 34, ch. 2021-14.