

CHAPTER 97-162

Committee Substitute for House Bill Nos. 845 and 1255

An act relating to tobacco products; amending s. 20.165, F.S.; authorizing employees of the Division of Alcoholic Beverages and Tobacco who are certified as law enforcement officers to investigate, enforce, and prosecute certain violations relating to tobacco products; redesignating chapter 569, F.S., as "Tobacco Products"; amending and renumbering s. 859.06, F.S., to clarify language; providing increased penalty for a second or subsequent violation for illegally selling or giving tobacco products to certain persons; amending s. 569.002, F.S.; revising the definition of "tobacco products"; revising definition language to exclude certain classes of persons from definition of "under age 18"; creating s. 569.11, F.S.; making it unlawful for any person under age 18 to knowingly possess any tobacco product or to misrepresent age or military service to acquire or purchase any tobacco product; providing for civil citation and imposition of sanctions by court; providing for the disposition of fines; creating s. 569.12, F.S.; providing for jurisdiction and enforcement and local tobacco product enforcement officers; providing for enforcement by correctional probation officers; providing necessary information for civil citation form; amending ss. 569.003, 569.004, and 569.006, F.S.; clarifying language; renumbering and amending s. 859.061, F.S., relating to posting of signs to conform and clarify language; providing for instructional material; authorizing use of electronic or automated systems upon approval by the division; providing penalties; amending s. 569.007, F.S.; providing restrictions on the sale or delivery of tobacco products; providing exceptions; creating s. 569.0075, F.S.; prohibiting the gift of sample tobacco products to persons under the age of 18; providing for penalties; amending s. 569.008, F.S.; requiring tobacco products dealers to exercise diligent management and supervision in the management and supervision of their premises and in supervision and training of their employees, agents, or servants; conforming and clarifying language relating to responsible tobacco product dealers; amending s. 569.009, F.S.; conforming and clarifying language relating to rulemaking authority; amending s. 322.056, F.S.; providing for mandatory revocation or suspension of, or delay of eligibility for, drivers' licenses for persons under age 18 who commit noncriminal tobacco violations and fail to comply with corresponding sanctions; providing a suspended or revoked driver's license as a result of violation, shall not result in increased automobile insurance premiums or in assessment of points against person's driving record; creating s. 569.19, F.S.; providing for an annual report; requiring notification to licensees and permittees of the provisions included in this legislation; providing an appropriation; providing an effective date.

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

Section 1. Paragraph (b) of subsection (9) of section 20.165, Florida Statutes, 1996 Supplement, is amended to read:

20.165 Department of Business and Professional Regulation.—There is created a Department of Business and Professional Regulation.

(9)

(b) All employees certified under chapter 943 as law enforcement officers shall have felony arrest powers under s. 901.15(11) and shall have all the powers of deputy sheriffs to:

1. Investigate, enforce, and prosecute, throughout the state, violations and violators of:

a. Parts I and II of chapter 210; part VII of chapter 559; and chapters 561-569; and s. 859.06 and the rules promulgated thereunder, as well as other state laws which the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.

b. All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the division.

2. Enforce all criminal laws of the state within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police department, or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

Section 2. Chapter 569, Florida Statutes, entitled "Tobacco Products Permits" is retitled "Tobacco Products."

Section 3. Section 859.06, Florida Statutes, is renumbered as section 569.101, Florida Statutes, and amended to read:

569.101 ~~859.06~~ Selling, delivering, bartering, furnishing, or giving tobacco products and cigarette wrappers to persons under 18 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 18 years of age, any cigarette or other tobacco product or cigarette wrapper. ~~As used in this section, the word "cigarette" includes a clove cigarette or tobacco substitute.~~

(2) Any person who violates subsection (1) commits is guilty of 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 cigarette or other tobacco product or cigarette wrapper was sold, delivered, bartered, furnished, or given:

- (a) The buyer or recipient falsely evidenced that 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'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 569.002, Florida Statutes, is amended to read:

569.002 Definitions.—As used in this chapter ~~ss. 569.002-569.009~~, 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) “Permit” is synonymous with the term “retail tobacco products dealer permit.”
- (4) “Retail tobacco products dealer” means the holder of a retail tobacco products dealer permit.
- (5) “Retail tobacco products dealer permit” means a permit issued by the division pursuant to s. 569.003.
- (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.
- (7) “Any person under the age of 18” does not include 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;
- (d) Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this chapter; or
- (e) Is working in conjunction with a law enforcement agency to test the compliance of dealers with this chapter.

Section 5. Section 569.11, Florida Statutes, is created to read:

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

(1) It is unlawful for any person under 18 years of age to knowingly possess any tobacco product. 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 attend a school approved anti-tobacco program, if locally 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's license or driving privilege, as provided in s. 322.056.

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 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 to purchase any tobacco product from a person or a vending machine. 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 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's license or driving privilege, as provided in s. 322.056.

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) 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 comply with the requirement

for paying the fine and must attend a school-approved anti-tobacco program, if locally available.

(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 18 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 must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver's license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 18 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 must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver's 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 transferred 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, pursuant to s. 233.067(4). 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 6. Section 569.12, Florida Statutes, is created to read:

569.12 Jurisdiction; tobacco 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 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 enforcement agent, nor does designation as a tobacco 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 enforcement officer is authorized to issue a citation to a person under the age of 18 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 or s. 569.11.

(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 18 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.

(4) A citation issued to any person violating the provisions of s. 569.11 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.
- (g) The procedure for the person to follow in order to contest the citation, perform the required community service, attend the required anti-tobacco program, or to pay the civil penalty.

Section 7. Paragraph (c) of subsection (1) of section 569.003, Florida Statutes, is amended to read:

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

(1)

~~(c) Permits shall be issued annually, beginning January 15, 1993, 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 chapter ss. 569.002-569.009, but the fee may not exceed \$50. The proceeds of the fee shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund.~~

Section 8. Section 569.004, Florida Statutes, is amended to read:

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 ss. 569.002-569.009 and ss. 859.06 and 859.061.

Section 9. Section 569.006, Florida Statutes, is amended to read:

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 s. 569.003, s. 569.005, s. 569.007, s. 859.06, or s. 859.061, 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.

Section 10. Section 859.061, Florida Statutes, is renumbered as section 569.14, Florida Statutes, and amended to read:

~~569.14~~ ~~859.061~~ Posting of a sign stating that the sale of ~~cigarettes and other tobacco products~~ to persons under 18 years of age is unlawful; enforcement; penalty.—

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

~~THE SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW (SECTION 859.06, FLORIDA STATUTES). PROOF OF AGE IS REQUIRED FOR PURCHASE.~~

(2) ~~The division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall make available to dealers retailers of cigarettes or other tobacco products signs that meet the requirements of subsection (1).~~

(3) Any dealer that sells tobacco 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 whether a person is of legal age to purchase tobacco 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.

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. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

~~(4)(3) The division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, through its agents and inspectors, shall enforce this section.~~

~~(5)(4) Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 11. Section 569.007, Florida Statutes, is amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under 18 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 (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. The sale or delivery of tobacco products through a vending machine is prohibited in order to prevent persons under 18 years of age from purchasing or receiving tobacco products through the use of such machines unless the machine is located within the unobstructed line of sight of a dealer or a dealer's agent or employee who is responsible for preventing persons under 18 years of age from purchasing tobacco products through that machine.

(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 18 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)(2) A dealer or a dealer's agent or employee may require proof of age of a purchaser of a tobacco product before selling the product to that person.~~

~~(5)(3) 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.~~

Section 12. Section 569.0075, Florida Statutes, is created to read:

569.0075 Gift of sample tobacco products prohibited.—The gift of sample tobacco products to any person under the age of 18 by an entity licensed or permitted under the provisions of chapter 210 or this chapter, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.101.

Section 13. Section 569.008, Florida Statutes, is amended to read:

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 underage persons under 18 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 ss. 569.002-569.009 and s. 859.06. 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 underage customers under 18 years of age.

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

(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 s. 569.005, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 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.

Section 14. Section 569.009, Florida Statutes, is amended to read:

569.009 Rulemaking authority.—The division shall adopt any rules necessary to administer and enforce the provisions of this chapter ss. 569.002-569.009.

Section 15. Section 322.056, Florida Statutes, is amended to read:

322.056 Mandatory revocation or suspension of, or delay of eligibility for, driver's license for persons under age 18 found guilty of certain alcohol, or drug, or tobacco offenses; prohibition.—

(1) Notwithstanding the provisions of s. 322.055, if a person under 18 years of age is found guilty of or delinquent for a violation of s. 562.11(2), s. 562.111, or chapter 893, and:

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

1. Not less than 6 months and not more than 1 year for the first violation.
2. Two years, for a subsequent violation.

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

1. Not less than 6 months and not more than 1 year for the first violation.
2. Two years, for a subsequent violation.

(c) The person is ineligible by reason of age for a driver's license or driving privilege, the court shall direct the department to withhold issuance of his or her driver's license or driving privilege for a period of:

1. Not less than 6 months and not more than 1 year after the date on which he would otherwise have become eligible, for the first violation.

2. Two years after the date on which he would otherwise have become eligible, for a subsequent violation.

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

(a) The person is eligible by reason of age for a driver's license or driving privilege, the court shall direct the department to revoke or 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.

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

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

(4)(2) A penalty imposed under this section ~~subsection (1)~~ shall be in addition to any other penalty imposed by law.

(5) The suspension or revocation of a person's driver's license imposed pursuant to subsection (2) or subsection (3), shall not result in or be cause for an increase of the convicted person's, or his or her parent's or legal

guardian's, automobile insurance rate or premium or result in points assessed against the person's driving record.

Section 16. Section 569.19, Florida Statutes, is created to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, starting with the year 1997, on the progress of implementing the enforcement provisions of this chapter. This must include, but is not limited to:

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

Section 17. Prior to October 1, 1997, the division shall apprise all persons licensed or permitted pursuant to chapter 210 or chapter 569 of the provisions contained in this legislation.

Section 18. Effective upon becoming a law, there is hereby appropriated \$25,000 from the Alcoholic Beverage and Tobacco Trust Fund to the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, for purposes of funding the printing and distribution of signs as required by s. 569.14, Florida Statutes.

Section 19. Except as otherwise provided herein, this act shall take effect October 1, 1997.

Approved by the Governor May 29, 1997.

Filed in Office Secretary of State May 29, 1997.