

CHAPTER 2024-127

Committee Substitute for Committee Substitute for House Bill No. 1007

An act relating to nicotine dispensing devices; amending s. 569.31, F.S.; defining and revising terms; creating s. 569.311, F.S.; providing legislative findings; authorizing the Attorney General to adopt rules for the creation of a directory listing nicotine dispensing devices for certain purposes; providing the Attorney General with factors that must be considered in determining which nicotine dispensing devices must be listed on such a directory; providing construction; providing that a determination by the Attorney General to include a nicotine dispensing device on the directory is subject to review under ch. 120, F.S.; providing applicability; requiring the Department of Legal Affairs to develop and maintain a directory of all nicotine products manufacturers that sell nicotine dispensing devices in this state which have been listed on the directory by the Attorney General; requiring the department to make the directory available for public inspection on its website by a certain date; providing retailers and wholesalers of a nicotine dispensing device that has been added to the directory a specified timeframe within which they may sell or remove the nicotine dispensing device from inventory; providing that such nicotine dispensing devices are considered contraband after such specified timeframe; providing that nicotine products manufacturers that offer for sale in this state a nicotine dispensing device listed on the directory are subject to a fine for each day the nicotine dispensing device is offered until it is either removed from the market or is no longer listed on the directory; providing retailers, distributors, and wholesalers a specified timeframe in which to remove a nicotine dispensing device from inventory after such device has been listed; creating s. 569.312, F.S.; providing criminal and civil penalties for a person who sells, ships, or otherwise distributes a listed nicotine dispensing device in this state for eventual retail sale; providing that a violation of this section is an unfair and deceptive trade practice; providing that the Department of Legal Affairs is the sole enforcement authority that may bring an action for an unfair or deceptive trade practice under this section; creating s. 569.345, F.S.; declaring nicotine dispensing devices that violate ch. 569, F.S., as contraband subject to seizure and confiscation by certain persons under the Florida Contraband Forfeiture Act; providing procedures for the seizure and destruction of such nicotine dispensing devices; providing applicability; creating s. 569.346, F.S.; requiring nonresident manufacturers of nicotine dispensing devices to appoint an agent in this state to accept service for any action or proceeding against the manufacturer; providing that service upon the agent constitutes service upon the manufacturer; requiring such manufacturers to notify the department of the termination and appointment of an agent within a specified timeframe; providing that the Secretary of State is deemed the agent for manufacturers that do not appoint an agent as required by law; amending s. 569.41, F.S.; revising

criminal penalties for those who sell, deliver, barter, furnish, or give a nicotine dispensing device, directly or indirectly, to persons under 21 years of age; amending s. 569.002, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 569.31, Florida Statutes, is amended to read:

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) “FDA” means the United States Food and Drug Administration.

~~(4)~~(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. For purposes of this definition, each individual stock keeping unit is considered a separate nicotine dispensing device.

~~(5)~~(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.

(6) “Nicotine products manufacturer” means any person or entity that manufactures nicotine products.

~~(7)~~(5) “Permit” is synonymous with the term “retail nicotine products dealer permit.”

~~(8)(6)~~ “Retail nicotine products dealer” means the holder of a retail nicotine products dealer permit.

~~(9)(7)~~ “Retail nicotine products dealer permit” means a permit issued by the division under s. 569.32.

~~(10)(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.

~~(11)~~ “Sell” or “sale” means, in addition to its common usage meaning, any sale, transfer, exchange, barter, gift, or offer for sale and distribution, in any manner or by any means.

Section 2. Section 569.311, Florida Statutes, is created to read:

569.311 Control of nicotine dispensing devices; grant of authority to Attorney General to create a directory of nicotine products attractive to minors.—

(1) The Legislature has determined that information, testings, approvals, or scientific evidence may, from time to time, indicate that certain nicotine dispensing devices have a greater potential to be attractive to and be abused by minors than was evident when such devices were allowed on the market. It is the intent of the Legislature to quickly provide a method to allow the state to seek removal of such items from the market.

(2) The Attorney General is hereby authorized to adopt rules creating a directory listing nicotine dispensing devices that are attractive to minors.

(3) A nicotine dispensing device is deemed attractive to minors, and the Attorney General shall include it in the directory, if the nicotine dispensing device has features that are significantly appealing to minors as compared to the legitimate benefits those features offer to lawful users of the product. In applying this standard, the Attorney General and reviewing courts shall consider the following:

(a) Surveys or other data sources indicating that a nicotine dispensing device is being used by minors at a higher rate than other nicotine dispensing devices.

(b) Complaints, reports, or other information related to the use of a nicotine dispensing device by minors from other minors, parents, teachers, school employees, school boards, law enforcement officers, retailers, and other industry related officials as compared to other nicotine dispensing devices.

(c) The extent to which the nicotine dispensing device:

1. Is designed to be attractive to minors, such as through the use of bright colors or cartoon characters.

2. Is designed so that it is easy for minors to use and to conceal.

3. Uses or resembles the trade dress of a branded food product, consumer food product, or logo of a food product.

4. Is marketed in a manner that uniquely appeals to minors.

5. Uses actual copyrights, service marks, or trademarks or fake or actual copyrights, service marks, or trademarks that resemble consumer or food products popular with minors, including the names of candy or cereal products.

(d) Any reports of physical harm to minors from using the nicotine dispensing device or evidence that the nicotine dispensing device presents unique risks to minors.

(e) Whether the manufacturer of the nicotine dispensing device submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j.

(4) In making the determination in subsection (3), the Attorney General shall consider a decision of the FDA regarding the nicotine dispensing device, if the decision is final and not subject to a stay, by a court or the agency, or subject to a timely petition for supervisory review, and the extent to which the FDA's decision was predicated, in whole or part, on the risks to minors outweighing other benefits of the nicotine dispensing device.

(5) Rulemaking under this section shall be in accordance with the procedural requirements of chapter 120, including the emergency rule provisions found in s. 120.54, except that s. 120.54(7) does not apply.

(6) A determination by the Attorney General under subsections (2) and (3) to include a nicotine dispensing device in the directory is subject to review under chapter 120.

(7) This section does not apply to a nicotine dispensing device that has received a marketing granted order under 21 U.S.C. s. 387j.

(8) This section shall only apply to, and a nicotine dispensing device shall only be subject to this section when, a nicotine dispensing device is either a single-use or disposable electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device that is intended to be discarded after use, or an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or other similar device that uses a sealed, prefilled, and disposable cartridge of nicotine in a solution. This section does not apply to an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or other similar device that is an open

system where a consumer fills a vial or other container with nicotine in a solution.

(9) The Department of Legal Affairs shall develop and maintain a directory listing all nicotine product manufacturers that sell nicotine dispensing devices in this state which the Attorney General has deemed attractive to minors under subsections (2) and (3). The department shall make the directory available January 1, 2025, for public inspection on its website. The department shall update the directory as necessary. The department shall establish a process to provide retailers, distributors, and wholesalers notice of the initial publication of the directory and any changes made to the directory.

(10) If a nicotine dispensing device is added to the directory, each retailer and each wholesaler holding nicotine dispensing devices for eventual sale to a consumer in this state has 60 days from the day such product is added to the directory to sell the product or remove the product from its inventory. After 60 days following the date a product is added to the directory, the product identified in the directory is contraband and subject to s. 569.345.

(11)(a) Except as provided in paragraphs (b) and (c), beginning March 1, 2025, or on the date that the department first makes the directory available for public inspection on its website, whichever is later, a nicotine product manufacturer that offers for sale in this state a nicotine dispensing device listed on the directory is subject to a fine of \$1,000 per day for each individual nicotine dispensing device offered for sale in violation of this section until the offending product is removed from the market or until the offending product is no longer listed on the directory.

(b) Each retailer shall have 60 days from the date that the department first makes the directory available for public inspection on its website to sell products that were in its inventory before that date or remove those products from inventory.

(c) Each distributor or wholesaler shall have 60 days from the date that the department first makes the directory available for public inspection on its website to remove from inventory those products intended for eventual retail sale to a consumer in this state.

Section 3. Section 569.312, Florida Statutes, is created to read:

569.312 Shipment of nicotine dispensing devices sold for retail sale in this state.—

(1) A nicotine product manufacturer, a retail nicotine products dealer, a wholesaler, or a distributor may not sell, ship, or otherwise distribute a nicotine dispensing device in this state for eventual retail sale to a consumer in this state that is listed on the directory.

(2) Any person who knowingly sells, ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A violation of this part is deemed an unfair and deceptive trade practice actionable under part II of chapter 501 that can only be enforced by the Department of Legal Affairs. If the department has reason to believe that a person is in violation of this section, the department may, as the sole enforcement authority, bring an action against such person for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to \$1,000 per nicotine dispensing device sold, shipped, or otherwise distributed.

Section 4. Section 569.345, Florida Statutes, is created to read:

569.345 Seizure and destruction of contraband nicotine dispensing devices.—All nicotine dispensing devices sold, delivered, possessed, or distributed contrary to any provision of this chapter are declared to be contraband, are subject to seizure and confiscation under the Florida Contraband Forfeiture Act by any person whose duty it is to enforce this chapter, and must be disposed of as follows:

(1) A court having jurisdiction shall order such nicotine dispensing devices forfeited upon a showing that, by a preponderance of the evidence, such devices were sold, delivered, possessed, or distributed contrary to any provision of this chapter. Once any chapter 120 proceedings related to such devices have been completed, the court shall order any seized nicotine dispensing devices destroyed except as provided by applicable court orders. A record of the place where such devices were seized, the kinds and quantities of such devices destroyed, and the time, place, and manner of the destruction of such devices must be kept, and a return under oath reporting the destruction must be made to the court by the officer who destroys such devices.

(2) The Department of Legal Affairs shall keep a full and complete record of all nicotine dispensing devices seized under this section showing:

(a) The exact kinds, quantities, and forms of such nicotine dispensing devices;

(b) The persons from whom such devices were seized and to whom they were delivered;

(c) By whose authority such devices were seized, delivered, and destroyed; and

(d) The dates of the seizure, disposal, or destruction of such devices.

Such record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

(3) The cost of seizure, confiscation, and destruction of contraband nicotine dispensing devices is borne by the person from whom such products are seized.

(4) Except as otherwise provided in this section, the procedures of the Florida Contraband Forfeiture Act apply to this section.

Section 5. Section 569.346, Florida Statutes, is created to read:

569.346 Agent for service of process.—

(1) Any nonresident manufacturer of nicotine dispensing devices which has not registered to do business in this state as a foreign corporation or business entity shall appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter, may be served in any manner authorized by law. Such service constitutes legal and valid service of process on the manufacturer. The manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the division.

(2) The manufacturer shall provide notice to the Department of Legal Affairs 30 calendar days before termination of the authority of an agent and shall further provide proof to the satisfaction of the department of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer shall notify the department of the termination within 5 calendar days and shall include proof to the satisfaction of the department of the appointment of a new agent.

(3) Any manufacturer whose nicotine dispensing devices are sold in this state which has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process.

Section 6. Subsection (2) of section 569.41, Florida Statutes, is amended to read:

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

(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. Any person who

violates subsection (1) for a third or subsequent time at any time after the first violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

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

Section 8. This act shall take effect October 1, 2024.

Approved by the Governor April 26, 2024.

Filed in Office Secretary of State April 26, 2024.