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## INFORMATIONAL BULLETIN 2021-002

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### DATE

Informational Bulletin 2021-002 is based on information available as of September 22, 2021.

### SUBJECT

Informational Bulletin 2021-002 relates to chapter 569, Florida Statutes, Tobacco and Nicotine Products, as renamed and amended by Chapter 2021-14, Laws of Florida.

### SCOPE

Informational Bulletin 2021-002 addresses chapter 2021-14, Laws of Florida, as it relates to the requirements for the sale of nicotine products by retail tobacco products dealers and retail nicotine products dealers.

### APPLICABLE LAWS/RULES

Sections 569.002, 569.006, 569.008, 569.101, 569.14, 569.31, 569.32, 569.34, 569.35, 569.381, 569.41, 569.43, 569.45, Florida Statutes.

### SUMMARY

On May 7, 2021, Governor DeSantis signed Senate Bill 1080 into law, creating chapter 2021-14, Laws of Florida. The changes to Florida law within the act take effect on October 1, 2021.

#### Purchaser Age and Definitions

Chapter 2021-14, Laws of Florida, amends section 569.101 and creates section 569.41, Florida Statutes, which states 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 or nicotine product. Limited exceptions are provided in the definitions listed under sections 569.002 and 569.31, Florida Statutes. A "nicotine product" is defined in section 569.31(4), Florida Statutes, as 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 section 569.002, Florida Statutes; (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. Section 569.31(3), Florida Statutes, defines “nicotine dispensing device” to mean 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.

#### Retail Permit Required

Additionally, chapter 2021-14, Laws of Florida, creates section 569.32(1)(a), Florida Statutes, which requires 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, to obtain a retail nicotine products dealer permit from the Division of Alcoholic Beverages and Tobacco for each place of business or premises at which nicotine products are sold. Because section 569.31(4), Florida Statutes, states the definition of a “nicotine product” includes any nicotine dispensing device, as defined by section 569.31(3), Florida Statutes, sales of a nicotine dispensing device must also be made by the holder of a retail nicotine products dealer permit. The only exception to the retail nicotine products dealer permit requirement is that an individual or business which holds a retail tobacco products dealer permit, as defined in section 569.002(4), Florida Statutes, 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 pursuant to section 569.34, Florida Statutes. Individuals or businesses selling nicotine products with a retail tobacco products dealer permit are subject to, and must be in compliance with, Part II Nicotine Products, Chapter 569, Florida Statutes according to section 569.34, Florida Statutes.

#### Retail Permit Application

Chapter 2021-14, Laws of Florida, only imposes a permit requirement on a person, firm, association, or corporation that deals, at retail, in nicotine products, in any manner, or allows a nicotine products vending machine to be located on its premises pursuant to section 569.34, Florida Statutes. There is no fee required to receive a retail nicotine products dealer permit. The Division is authorized to issue a retail nicotine products dealer permit to qualified applicants. Businesses or individuals seeking a permit may submit Form ABT-6028, Application for Retail Tobacco or Nicotine Products Dealer Permit (September 2021), which can be accessed [here](#).

#### Delivery Sales

Any individuals or businesses seeking to deal, at retail, in nicotine products must obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in section 569.002, Florida Statutes, from the Division under the requirements of chapter 569, Florida Statutes, before accepting an order for a delivery sale and should review the detailed requirements for such delivery sales within section 569.45, Florida Statutes to ensure compliance. A sale of nicotine products constituting a delivery sale under section 569.45(1)(b), Florida Statutes is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside the state.

### Required Signs and Instructional Material

Retail nicotine products dealers must also post a clear and conspicuous sign pursuant to section 569.43, Florida Statutes, in each place of business at which such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

The Division has produced a sign that may be downloaded and posted by retail nicotine products dealers [here](#). In addition, for locations where nicotine products or nicotine dispensing devices are also sold with tobacco products, the Division has produced a sign that may be downloaded and posted by retail tobacco products dealers [here](#). Also, section 569.43, Florida Statutes, requires that any dealer that sells nicotine products shall provide at the checkout counter in a location clearly visible to the dealer or 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 nicotine products.

### Responsible Dealer

Finally, chapter 2021-14, Laws of Florida, extends the responsible retail tobacco products dealer requirements to retail nicotine products dealers in section 569.381, Florida Statutes. To be considered a responsible retail nicotine products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with the provisions of Part II, Nicotine Products, Chapter 569, Florida Statutes. 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. As a benefit to Dealers who qualify as a responsible retail nicotine products dealer, when determining penalties under section 569.35, Florida Statutes, 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 where certain additional conditions are met under section 569.381, Florida Statutes.

## **FREQUENTLY ASKED QUESTIONS**

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1. Do I now have to be 21 years of age or older to purchase tobacco products or nicotine products in Florida?

Yes. 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 or nicotine product pursuant to sections 569.101 and 569.41, Florida Statutes. However, sections 569.002 and 569.31, Florida Statutes, provide some exceptions in the listed definitions for individuals acting in the scope of their lawful employment and individuals in the military reserve or in active duty in the Armed Forces of the United States.

2. What is the definition of a nicotine product?

Section 569.31(4), Florida Statutes, states "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.

**3. What is the definition of a nicotine dispensing device?**

Section 569.31(3), Florida Statutes, states “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. Do I need a permit if my business only sells nicotine dispensing devices which do not contain nicotine?**

Yes. Section 569.32(1)(a), Florida Statutes, states 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. Section 569.31(4), Florida Statutes, states the definition of a “nicotine product” includes any nicotine dispensing device. Therefore, sales of a nicotine dispensing device, as defined by section 569.31(3), Florida Statutes, must be made by a retail nicotine products dealer or retail tobacco products dealer, as permitted by section 569.34, Florida Statutes.

**5. If I currently have a retail tobacco products dealer permit, do I need any other permit on October 1, 2021 to sell nicotine products?**

No. Section 569.34, Florida Statutes, states a retail tobacco products dealer, as defined in section 569.002(4), Florida Statutes, 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. However, individuals or businesses selling such products are subject to, and must be in compliance with, Part II Nicotine Products, Chapter 569, Florida Statutes.

**6. Do manufacturers or distributors of nicotine products need to be licensed on October 1, 2021?**

No. Chapter 2021-14, Laws of Florida, only imposes a permit requirement on a person, firm, association, or corporation that deals, at retail, in nicotine products, in any manner, or allows a nicotine products vending machine to be located on its premises pursuant to section 569.34, Florida Statutes.

**7. How do I apply for a retail nicotine products dealer permit?**

The Division is authorized to issue a retail nicotine products dealer permit to qualified applicants. Businesses or individuals seeking a permit may submit Form ABT-6028, Application for Retail Tobacco or Nicotine Products Dealer Permit (September 2021), which can be accessed [here](#).

**8. Are there any taxes on nicotine products beginning on October 1, 2021?**

No. Chapter 2021-14, Laws of Florida, does not impose any tax to be collected by the Division upon the retail sale of nicotine products. However, other state and local taxes may apply to such sales.

9. What are the requirements for mail order, internet and remote sales of nicotine products to consumers?

A retailer must obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit from the Division under the requirements of Chapter 569, Florida Statutes, before accepting an order for a delivery sale and should review the detailed requirements for such delivery sales within section 569.45, Florida Statutes to ensure compliance. It should be noted that a sale of nicotine products constituting a delivery sale under section 569.45(1)(b), Florida Statutes, is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside the state.

10. What type of signs must be posted by businesses selling tobacco and/or nicotine products?

- A. Tobacco Products Only: Section 569.14, Florida Statutes requires a dealer that sells tobacco products to post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF  
21 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR  
PURCHASE.

The Division has produced a sign for download and posting by all retail tobacco products dealers, which can be accessed [here](#).

- B. Nicotine Products Only: Section 569.43, Florida Statutes requires a dealer that sells nicotine products to post a clear and conspicuous sign in each place of business at which such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES  
TO PERSONS UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW. PROOF  
OF AGE IS REQUIRED FOR PURCHASE.

The Division has produced a sign for download and posting by all retail nicotine products dealers, which can be accessed [here](#).

- C. Tobacco Products and Nicotine Products: Section 569.14, Florida Statutes also states that a dealer that sells tobacco products and nicotine products or nicotine dispensing devices may use a sign that substantially states the following:

THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST  
FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described above meets the signage requirements of sections 569.14 (1) and 569.43(1), Florida Statutes. For locations where nicotine products or nicotine dispensing devices are also sold with tobacco, the Division has produced a sign for download and posting by all retail tobacco products dealers, which can be accessed [here](#).

11. What type of employee instructional material must be provided at the checkout counter where nicotine products are sold?

Section 569.43, Florida Statutes, requires that any dealer that sells nicotine products shall provide at the checkout counter in a location clearly visible to the dealer or 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 nicotine products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE

(insert date and applicable year)

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

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 nicotine products. Failure to comply with the provisions above shall result in imposition of administrative penalties as provided in section 569.35, Florida Statutes.

- 12.** What is a responsible retail tobacco products dealer or responsible retail nicotine products dealer and how can I qualify as a responsible dealer?

The legislature enacted sections 569.008 and 569.381, Florida Statutes, to prevent the sale of tobacco products and nicotine products to persons under 21 years of age and to encourage dealers to comply with responsible practices. To qualify as a responsible retail nicotine products dealer or 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 Part II, Nicotine Products, Chapter 569, Florida Statutes. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and/or nicotine products and which includes at least the following topics: (a) Laws covering the sale of tobacco and/or 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.

- 13.** What is the benefit of becoming a responsible retail tobacco products dealer or responsible retail nicotine products dealer?

In determining penalties under sections 569.006 or 569.35, Florida Statutes, the Division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product or 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 sections 569.008 and/or 569.381, Florida Statutes. (b) The dealer provided the training program required by sections 569.008(2) and/or 569.381(2), Florida Statutes, 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.