

Select Year: 2021 ▼

The 2021 Florida Statutes

Title XXIX

PUBLIC HEALTH

Chapter 386

PARTICULAR CONDITIONS AFFECTING PUBLIC HEALTH

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386.212 Smoking and vaping prohibited near school property; penalty.—

(1) It is unlawful for any person under 21 years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

(2) A law enforcement officer may issue a citation in such form as prescribed by a county or municipality to any person violating this section. Any such citation must contain:

- (a) The date and time of issuance.
- (b) The name and address of the person cited.
- (c) The date and time the civil infraction was committed.
- (d) The statute violated.
- (e) The facts constituting the violation.
- (f) The name and authority of the law enforcement officer.
- (g) The procedure for the person to follow to pay the civil penalty, to contest the citation, or to appear in court.
- (h) The applicable civil penalty if the person elects not to contest the citation.
- (i) The applicable civil penalty if the person elects to contest the citation.

(3) Any person issued a citation pursuant to this section shall be deemed to be charged with a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco or anti-vaping “alternative to suspension” program.

(4) Any person who fails to comply with the directions on the citation shall be deemed to waive his or her right to contest the citation and an order to show cause may be issued by the court.

History.—s. 1, ch. 96-217; s. 12, ch. 2003-398; s. 12, ch. 2019-14; s. 3, ch. 2021-14.

The Florida Senate

2018 Florida Statutes

<u>Title XLVI</u> CRIMES	<u>Chapter 877</u> MISCELLANEOUS CRIMES <u>Entire Chapter</u>	SECTION 112 Nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption.
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877.112 Nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption. —

(1) DEFINITIONS. — As used in this section, the term:

(a) “Nicotine dispensing device” means any product that employs an electronic, chemical, or mechanical means to produce vapor 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.

(b) “Nicotine product” means any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means, but does not include a:

1. Tobacco product, as defined in s. 569.002;
2. 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
3. Product that contains incidental nicotine.

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

(2) PROHIBITIONS ON SALE TO MINORS. — It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.

(3) PROHIBITIONS ON GIFTING SAMPLES TO MINORS. — The gift of a sample nicotine product or nicotine dispensing device to any person under the age of 18 by a retailer of nicotine products or nicotine dispensing devices, or by an employee of such retailer, is prohibited.

(4) PENALTIES. — Any person who violates subsection (2) or subsection (3) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (2) or

subsection (3) 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.

(5) AFFIRMATIVE DEFENSES.—A person charged with a violation of subsection (2) or subsection (3) has a complete defense if, at the time the nicotine product or nicotine dispensing device was sold, delivered, bartered, furnished, or given:

- (a) The buyer or recipient falsely evidenced that she or 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 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.

(6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. Any person under 18 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. In addition, the person must attend a school-approved anti-tobacco and nicotine 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 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.

(7) PROHIBITION ON MISREPRESENTING AGE.—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 retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine. Any person under 18 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 nicotine 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 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.

(8) PENALTIES FOR MINORS. —

(a) A 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 and 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.

(b) 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 (6) or subsection (7). 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.

(c) 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 (6)(a) or paragraph (7)(a), or attend a school-approved anti-tobacco and nicotine program, if locally available, the court must 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 30 consecutive days.

(d) 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 (6)(b) or paragraph (7)(b), the court must 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 45 consecutive days.

(9) DISTRIBUTION OF CIVIL FINES. — Eighty percent of all civil penalties received by a county court pursuant to subsections (6) and (7) 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, nicotine products, or nicotine dispensing devices 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.

(10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE PRODUCTS AND NICOTINE DISPENSING DEVICES. —

(a) Any retailer that sells nicotine products or nicotine dispensing devices shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

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

(b) A retailer that sells nicotine products or nicotine dispensing devices shall provide at the checkout counter in a location clearly visible to the retailer or the retailer'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 or nicotine dispensing devices. 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 NICOTINE PRODUCTS OR
NICOTINE DISPENSING DEVICES.

In lieu of a calendar a retailer 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 or nicotine dispensing devices.

(11) SELF-SERVICE MERCHANDISING PROHIBITED. —

(a) A retailer that sells nicotine products or nicotine dispensing devices 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 retailer that sells nicotine products or nicotine dispensing devices 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.

(c) Paragraphs (a) and (b) do not apply to an establishment that prohibits persons under 18 years of age on the premises.

(12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES. —

(a) In order to prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, the sale or delivery of such products or devices is prohibited, except:

1. When under the direct control, or line of sight where effective control may be reasonably maintained, of the retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee; or
2. Sales from a vending machine are prohibited under subparagraph 1. and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the retailer of nicotine products or nicotine dispensing devices or such retailer'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 or nicotine dispensing device. 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 or nicotine dispensing device is dispensed at a time.

(b) Paragraph (a) does not apply to an establishment that prohibits persons under 18 years of age on the premises.

(c) A retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee may require proof of age of a purchaser of such products or devices before selling the product or device to that person.

History.—s. 2, ch. 2014-65.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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