

CHAPTER 569

TOBACCO PRODUCTS PERMITS

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569.002 Definitions.—As used in 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, which can be used for smoking, sniffing, or chewing.

History.—s. 2, ch. 92–285; s. 222, ch. 94–218.

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 appli-

cation 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, 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 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.

(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 18 years of age or older or to corporations the officers of which are 18 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 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.

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

History.—s. 4, ch. 92-285.

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 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.

History.—s. 6, ch. 92-285.

569.007 Sale or delivery of tobacco products; restrictions.—

(1) 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) 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.

(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.

History.—s. 7, ch. 92-285; s. 53, ch. 95-144.

569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties.

(1) The Legislature intends to prevent the sale of tobacco products to underage persons 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 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.
- (c) Procedures for proper examination of identification cards in order to verify that customers are not underage.

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

(3) In determining penalties under s. 569.005, 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 lockout 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.

History.—s. 8, ch. 92-285.

569.009 Rulemaking authority.—The division shall adopt any rules necessary to administer and enforce ss. 569.002-569.009.

History.—s. 9, ch. 92-285.