

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee

3 Representative Broxson offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 501.975, Florida Statutes, is created

8 to read:

9 501.975 Restrictions on sale of dextromethorphan.-

10 (1) As used in this section, the term:

11 (a) "Finished drug product" means a drug legally marketed
12 under the Federal Food, Drug, and Cosmetic Act that is in
13 finished dosage form. For purposes of this section, the term
14 "drug" is defined pursuant to s. 499.003(18).

15 (b) "Proof of age" means any document issued by a
16 governmental agency that contains the date of birth and a

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17 description or photograph of the person purchasing the finished
18 drug product. The term includes, but is not limited to, a
19 passport, United States Armed Services identification card,
20 driver license, or an identification card issued by this state
21 or another state of the United States.

22 (2) (a) A manufacturer, distributor, retail entity, or its
23 employees and representatives, may not knowingly or willfully
24 sell a finished drug product containing any quantity of
25 dextromethorphan to a person younger than 18 years of age.

26 (b) A person younger than 18 years of age may not purchase
27 a finished drug product containing any quantity of
28 dextromethorphan.

29 (3) An employee or representative of a retail entity
30 making a retail sale of a finished drug product containing any
31 quantity of dextromethorphan must require and obtain proof of
32 age from the purchaser before completing the sale, unless from
33 the purchaser's outward appearance the person making the sale
34 would reasonably presume the purchaser to be 25 years of age or
35 older.

36 (4) (a) A manufacturer, distributor, or retailer whose
37 employee or representative, during the course of the employee's
38 or representative's employment or association with the
39 manufacturer, distributor, or retailer, sells dextromethorphan
40 in violation of this section is subject to:

41 1. A written warning for the initial violation for each
42 sales location;

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43 2. A civil penalty of not more than \$100 for the second
44 violation for each sales location;

45 3. A civil penalty of not more than \$500 for subsequent
46 violations for each sales location.

47
48 A manufacturer, distributor, or retailer who demonstrates a good
49 faith effort to comply with this section is not subject to a
50 civil penalty. The civil penalty shall accrue and may be
51 recovered in a civil action brought by the local jurisdiction

52 (b) A person who possesses or receives dextromethorphan
53 with the intent to distribute in violation of this section, is
54 subject to a civil penalty of not more than \$25 for each
55 violation, which shall accrue and may be recovered in a civil
56 action brought by the local jurisdiction. A civil penalty issued
57 to a person pursuant to this subparagraph shall include
58 information regarding how to dispute the penalty, and shall
59 clearly state that the violation is a noncriminal violation.

60 (c) An employee or representative of a manufacturer,
61 distributor, or retailer who, during the course of the
62 employee's or representative's employment or association with
63 the manufacturer, distributor, or retailer, sells
64 dextromethorphan in violation of this section is subject to a
65 written warning.

66 (5) Any civil penalty issued to a manufacturer,
67 distributor, or retailer shall be provided to the manager on
68 duty at the time the penalty is discovered. If no manager is

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69 available, the law enforcement officer shall attempt to contact
70 the manager for service. If unsuccessful, the law enforcement
71 officer may leave a copy with the employee and mail a copy to
72 the owner's business address as filed with the Department of
73 State or may return for service at a later time. The civil
74 penalty shall provide the following information:

75 (a) The date and approximate time of the sale in violation
76 of this section;

77 (b) The location of the sale, including the address;

78 (c) The name of the employee or representative that
79 completed the sale;

80 (d) Information regarding how to dispute the penalty; and

81 (e) Notice that the violation is a noncriminal violation.

82 (6) This section shall be applied uniformly throughout the
83 state. Enforcement of this section shall remain with local law
84 enforcement departments and officials charged with the
85 enforcement of the laws of the state.

86 (7) To dispute the civil penalty, the recipient of the
87 penalty must provide notice of the dispute to the clerk of the
88 county court in the jurisdiction in which the violation occurred
89 within 15 days of receipt of the penalty. The local
90 jurisdiction, through its duly authorized officers, shall hold a
91 hearing in the court of competent jurisdiction when a civil
92 penalty for violation of this section is issued, the violation
93 is disputed, and the recipient is issued the penalty by a law
94 enforcement officer employed by or acting on behalf of the

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95 jurisdiction. If the court finds in favor of the jurisdiction,
96 the court shall require the payment of the fines as provided in
97 this section.

98 (8) This section does not:

99 (a) Impose any restriction on the placement of products in
100 a retail store, direct access of customers to finished drug
101 products, or the maintenance of transaction records.

102 (b) Apply to a medication containing dextromethorphan that
103 is sold by a retail entity pursuant to a valid prescription.

104 (c) Create a criminal violation. Any person who violates
105 the provisions of this section commits a noncriminal violation
106 as provided in s. 775.08(3).

107 (9) This section preempts any ordinance regulating the
108 sale, distribution, receipt, or possession of dextromethorphan
109 enacted by a county, municipality, or other political
110 subdivision of the state, and dextromethorphan is not subject to
111 further regulation by such political subdivisions.

112 Section 2. This act shall take effect January 1, 2017.

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115 **T I T L E A M E N D M E N T**

116 Remove everything before the enacting clause and insert:

117 A bill to be entitled

118 An act relating to the retail sale of

119 dextromethorphan; creating s 501.975, F.S.; providing

120 definitions; prohibiting a retail entity from

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121 knowingly or willfully selling a finished drug product
122 containing dextromethorphan to a person younger than
123 18 years of age; prohibiting a person younger than 18
124 years of age from purchasing a finished drug product
125 containing dextromethorphan; requiring a person making
126 a retail sale of a finished drug product containing
127 any quantity of dextromethorphan to obtain certain
128 proof of age from the purchaser; providing an
129 exception; providing penalties; providing
130 applicability; preempting local government regulation
131 of dextromethorphan; providing an effective date.