

1 A bill to be entitled
 2 An act relating to the retail sale of
 3 dextromethorphan; providing definitions; prohibiting a
 4 manufacturer, distributor, or retailer, or its
 5 employees and representatives, from knowingly or
 6 willfully selling a finished drug product containing
 7 dextromethorphan to a person younger than 18 years of
 8 age; prohibiting a person younger than 18 years of age
 9 from purchasing a finished drug product containing
 10 dextromethorphan; requiring an employee or
 11 representative of a retailer making a retail sale of a
 12 finished drug product containing any quantity of
 13 dextromethorphan to obtain certain proof of age from
 14 the purchaser; providing an exception; providing
 15 penalties; providing requirements for imposing or
 16 disputing civil penalties; specifying information to
 17 be provided in notices of such penalties; providing
 18 applicability; preempting local government regulation
 19 of dextromethorphan; providing an effective date.

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

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 23 Section 1. Restrictions on sale of dextromethorphan.-
 24 (1) As used in this section, the term:
 25 (a) "Finished drug product" means a drug legally marketed
 26 under the Federal Food, Drug, and Cosmetic Act that is in

27 finished dosage form. For purposes of this section, the term
28 "drug" has the same meaning as provided in s. 499.003(18).

29 (b) "Proof of age" means any document issued by a
30 governmental agency that contains the date of birth and a
31 description or photograph of the person purchasing the finished
32 drug product. The term includes, but is not limited to, a
33 passport, a driver license, or an identification card issued by
34 this state, another state, or any branch of the United States
35 Armed Forces.

36 (2) (a) A manufacturer, distributor, or retailer, or its
37 employees and representatives, may not knowingly or willfully
38 sell a finished drug product containing any quantity of
39 dextromethorphan to a person younger than 18 years of age.

40 (b) A person younger than 18 years of age may not purchase
41 a finished drug product containing any quantity of
42 dextromethorphan.

43 (3) An employee or representative of a retailer making a
44 retail sale of a finished drug product containing any quantity
45 of dextromethorphan must require and obtain proof of age from
46 the purchaser before completing the sale, unless from the
47 purchaser's outward appearance the person making the sale would
48 reasonably presume the purchaser to be 25 years of age or older.

49 (4) (a) Each sales location of a manufacturer, distributor,
50 or retailer whose employee or representative, during the course
51 of the employee's or representative's employment or association
52 with the manufacturer, distributor, or retailer, sells

53 dextromethorphan in violation of this section is subject to a
54 written warning for an initial violation or, for each subsequent
55 violation, a civil penalty of not more than \$100, which shall
56 accrue and may be recovered in a civil action brought by the
57 local jurisdiction. A manufacturer, distributor, or retailer who
58 demonstrates a good faith effort to comply with this section is
59 not subject to the civil penalty.

60 (b) 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 (c) A person who possesses or receives dextromethorphan
67 with the intent to distribute to a person younger than 18 years
68 of age in violation of this section is subject to a civil
69 penalty of not more than \$25 for each violation, which shall
70 accrue and may be recovered in a civil action brought by the
71 local jurisdiction. Notice of a civil penalty issued to a person
72 pursuant to this paragraph shall include information regarding
73 how to dispute the civil penalty and shall clearly state that
74 the violation is a noncriminal violation.

75 (5) Notice of a civil penalty issued to a manufacturer,
76 distributor, or retailer pursuant to this section shall be
77 provided to the manager on duty at the time the notice is
78 issued. If a manager is not available, a local law enforcement

79 officer shall attempt to contact the manager to issue the
80 notice. If the local law enforcement officer is unsuccessful in
81 contacting the manager, he or she may leave a copy of the notice
82 with an employee and mail a copy of the notice to the owner's
83 business address, as filed with the Department of State, or he
84 or she may return to issue the notice at a later time. A notice
85 of civil penalty shall provide:

86 (a) The date and approximate time of the sale in violation
87 of this section.

88 (b) The location of the sale, including the address.

89 (c) The name of the employee or representative that
90 completed the sale.

91 (d) Information regarding how to dispute the civil
92 penalty.

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

94 (6) To dispute the civil penalty, the recipient of the
95 notice must notify the clerk of the county court in the
96 jurisdiction in which the violation occurred of the dispute in
97 writing within 15 days after receipt of the notice. The local
98 jurisdiction, through its duly authorized officers, shall hold a
99 hearing in the court of competent jurisdiction when a notice of
100 a violation of this section is issued, when the violation is
101 disputed, and when the recipient is issued the notice of civil
102 penalty by a local law enforcement officer employed by or acting
103 on behalf of the jurisdiction. If the court finds in favor of
104 the jurisdiction, the court shall require payment of the civil

105 penalty as provided in this section.

106 (7) This section shall be applied uniformly throughout the
107 state. Enforcement of this section shall remain with local law
108 enforcement departments and officials charged with the
109 enforcement of the laws of the state.

110 (8) This section does not:

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

114 (b) Apply to a medication containing dextromethorphan that
115 is sold by a retailer pursuant to a valid prescription.

116 (c) Create a criminal violation. A person who violates
117 this section commits a noncriminal violation as defined in s.
118 775.08(3).

119 (9) This section preempts any ordinance regulating the
120 sale, distribution, receipt, or possession of dextromethorphan
121 enacted by a county, municipality, or other political
122 subdivision of the state, and dextromethorphan is not subject to
123 further regulation by such political subdivisions.

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