

By the Committee on Health Policy; and Senator Benacquisto

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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 18 years of age or younger
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 citations; specifying information to
17 be provided in such citations; providing
18 applicability; preempting local government regulation
19 of dextromethorphan; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
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 paragraph, 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

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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 18 years of age or younger may not purchase a
41 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 and, for each
55 subsequent violation, a civil citation imposing a fine of not
56 more than \$100, which shall accrue and may be recovered in a
57 civil action brought by the local jurisdiction. A manufacturer,
58 distributor, or retailer who demonstrates a good faith effort to
59 comply with this section is not subject to citation.

60 (b) An employee or representative of a manufacturer,
61 distributor, or retailer who, during the course of the

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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 in
67 violation of this section with the intent to distribute is
68 subject to a civil citation imposing a fine of not more than
69 \$100 for each violation, which shall accrue and may be recovered
70 in a civil action brought by the local jurisdiction. A civil
71 citation issued to a person pursuant to this paragraph shall
72 include information regarding how to dispute the citation and
73 shall clearly state that the violation is a noncriminal
74 violation.

75 (5) A civil citation issued to a manufacturer, distributor,
76 or retailer pursuant to this section shall be provided to the
77 manager on duty at the time the citation is issued. If a manager
78 is not available, a local law enforcement officer shall attempt
79 to contact the manager to issue the citation. If the local law
80 enforcement officer is unsuccessful in contacting the manager,
81 he or she may leave a copy of the citation with an employee 18
82 years of age or older and mail a copy of the citation by
83 certified mail to the owner's business address, as filed with
84 the Department of State, or he or she may return to issue the
85 citation at a later time. The civil citation 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.

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91 (d) Information regarding how to dispute the citation.

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

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

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

109 (8) This section does not:

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

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

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

118 (9) This section preempts any ordinance regulating the
119 sale, distribution, receipt, or possession of dextromethorphan

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120 enacted by a county, municipality, or other political
121 subdivision of the state, and dextromethorphan is not subject to
122 further regulation by such political subdivisions.

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