

By the Committees on Commerce and Tourism; and Health Policy;  
and Senator Benacquisto

577-03606-16

2016938c2

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 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

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

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61 (b) An employee or representative of a manufacturer,  
62 distributor, or retailer who, during the course of the  
63 employee's or representative's employment or association with  
64 the manufacturer, distributor, or retailer, sells a finished  
65 drug product containing any quantity of dextromethorphan in  
66 violation of this section is subject to a written warning.

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

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

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

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

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

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

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

94 (6) To dispute the citation, the recipient of the citation  
95 must provide notice of the dispute to the clerk of the county  
96 court in the jurisdiction in which the violation occurred within  
97 15 days after receipt of the citation. The local jurisdiction,  
98 through its duly authorized officers, shall hold a hearing in  
99 the court of competent jurisdiction when a citation for a  
100 violation of this section is issued, when the violation is  
101 disputed, and when the recipient is issued the citation by a  
102 local law enforcement officer employed by or acting on behalf of  
103 the jurisdiction. If the court finds in favor of the  
104 jurisdiction, the court shall require payment of the fine as  
105 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 this  
117 section commits a noncriminal violation as defined in s.  
118 775.08(3).

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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.