

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 \$100 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 who is 18 years of age or older and mail a copy  
83 of the notice by certified mail to the owner's business address,  
84 as filed with the Department of State, or he or she may return  
85 to issue the notice at a later time. A notice of civil penalty  
86 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.

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

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

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

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

105 the jurisdiction, the court shall require payment of the civil  
106 penalty as provided in this section.

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

111 (8) This section does not:

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

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

117 (c) Create a criminal violation. A person who violates  
118 this section commits a noncriminal violation as defined in s.  
119 775.08(3).

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

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