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1
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.
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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

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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 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,

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59 distributor, or retailer who demonstrates a good faith effort to
60 comply with this section is not subject to citation.

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

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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 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

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117 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.