

## CHAPTER 2016-176

### Committee Substitute for Committee Substitute for Senate Bill No. 938

An act relating to the retail sale of dextromethorphan; providing definitions; prohibiting a manufacturer, distributor, or retailer, or its employees and representatives, from knowingly or willfully selling a finished drug product containing dextromethorphan to a person younger than 18 years of age; prohibiting a person younger than 18 years of age from purchasing a finished drug product containing dextromethorphan; requiring an employee or representative of a retailer making a retail sale of a finished drug product containing any quantity of dextromethorphan to obtain certain proof of age from the purchaser; providing an exception; providing penalties; providing requirements for imposing or disputing civil citations; specifying information to be provided in such citations; providing applicability; preempting local government regulation of dextromethorphan; providing an effective date.

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

#### Section 1. Restrictions on sale of dextromethorphan.—

(1) As used in this section, the term:

(a) “Finished drug product” means a drug legally marketed under the Federal Food, Drug, and Cosmetic Act that is in finished dosage form. For purposes of this paragraph, the term “drug” has the same meaning as provided in s. 499.003(18).

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

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

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

(3) An employee or representative of a retailer making a retail sale of a finished drug product containing any quantity of dextromethorphan must require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser’s outward appearance the person making

the sale would reasonably presume the purchaser to be 25 years of age or older.

(4)(a) Each sales location of a manufacturer, distributor, or retailer whose employee or representative, during the course of the employee's or representative's employment or association with the manufacturer, distributor, or retailer, sells a finished drug product containing any quantity of dextromethorphan in violation of this section is subject to a written warning for an initial violation and, for each subsequent violation, a civil citation imposing a fine of not more than \$100, which shall accrue and may be recovered in a civil action brought by the local jurisdiction. A manufacturer, distributor, or retailer who demonstrates a good faith effort to comply with this section is not subject to citation.

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

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

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

- (a) The date and approximate time of the sale in violation of this section.
- (b) The location of the sale, including the address.
- (c) The name of the employee or representative that completed the sale.
- (d) Information regarding how to dispute the citation.
- (e) Notice that the violation is a noncriminal violation.

(6) To dispute the citation, the recipient of the citation must provide notice of the dispute to the clerk of the county court in the jurisdiction in

which the violation occurred within 15 days after receipt of the citation. The local jurisdiction, through its duly authorized officers, shall hold a hearing in the court of competent jurisdiction when a citation for a violation of this section is issued, when the violation is disputed, and when the recipient is issued the citation by a local law enforcement officer employed by or acting on behalf of the jurisdiction. If the court finds in favor of the jurisdiction, the court shall require payment of the fine as provided in this section.

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

(8) This section does not:

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

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

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

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

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

Approved by the Governor April 1, 2016.

Filed in Office Secretary of State April 1, 2016.