



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 73*

132nd General Assembly
(As Reported by H. Health)

Reps. Rezabek and Koehler

BILL SUMMARY

- Prohibits a retailer from selling or otherwise providing a drug containing dextromethorphan to a person under 18 without a prescription.
- Makes violation of that prohibition a minor misdemeanor.

CONTENT AND OPERATION

Prohibition against the sale of dextromethorphan to persons under 18

Dextromethorphan is a drug that is used to temporarily relieve coughs caused by the common cold, flu, or other conditions. It does not treat the cause of the cough or speed recovery; instead, it decreases activity in the part of the brain that causes coughing. Dextromethorphan is available without a prescription and may be obtained alone or in combination with antihistamines, cough suppressants, and decongestants.¹

The bill prohibits a retailer that offers consumer products for sale to the general public, including a licensed terminal distributor of dangerous drugs, or an employee of a retailer, from knowingly supplying, delivering, giving, or otherwise providing a drug containing any quantity of dextromethorphan to a person under 18, unless the person has a prescription for the product being purchased.²

* This analysis was prepared before the report of the House Health Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

¹ National Institutes of Health, U.S. National Library of Medicine, MedlinePlus, *Dextromethorphan*, available at <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682492.html>.

² R.C. 2925.62(B).

Determining age and identity

The bill does not specifically require the person selling dextromethorphan to request proof of the purchaser's age; however, it provides that unless the purchaser's outward appearance is such that the person making the sale can reasonably presume the purchaser is 25 or older, it is prima facie evidence of a violation of the bill's prohibition if the person making the sale does not require and obtain evidence of majority and identity.³ Proof that a person demanded, was shown, and reasonably relied on evidence of majority and identity is a defense to criminal prosecution for violation of the bill's prohibition.⁴

"Evidence of majority and identity" is defined to mean a government document, including a driver's license, commercial driver's license, Ohio identification card, military identification card, or other form of identification that bears the name, birthdate, description, and picture of the person identified.⁵

Use of age-verification technology at the point of sale

The bill requires that, to the extent feasible, retailers that sell dextromethorphan or dextromethorphan-containing products without a prescription must use a cash register equipped with an age-verification feature to monitor age-restricted items. The cash register must be programmed to direct the retail clerk to request evidence of majority and identity before a product containing dextromethorphan may be purchased.⁶

Qualified immunity

The bill provides that a retailer or an employee of a retailer is not liable for civil damages arising from failing to prevent the sale of dextromethorphan to a person under 18, unless the failure constitutes willful or wanton misconduct.⁷

³ R.C. 2925.62(C).

⁴ R.C. 2925.62(D).

⁵ R.C. 2925.62(A)(2).

⁶ R.C. 2925.62(F).

⁷ R.C. 2925.62(G).



Penalty

The bill makes it a minor misdemeanor to violate its prohibition against supplying dextromethorphan to a person under 18.⁸ However, a retail clerk who fails to require and obtain proof of age from a purchaser is not guilty of a violation of the bill's provisions, or subject to any penalties, unless the clerk is a willful participant in an ongoing conspiracy to violate the prohibition.⁹

HISTORY

ACTION	DATE
Introduced	02-21-17
Reported, H. Health	---

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⁸ R.C. 2925.62(H).

⁹ R.C. 2925.62(E).

