



# OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 73 of the 132nd G.A.

**Status:** As Reported by House Health

**Sponsor:** Reps. Rezabek and Koehler

**Local Impact Statement Procedure Required:** No

**Subject:** Prohibition against the sale of dextromethorphan to persons under 18

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### State and Local Fiscal Highlights

- Retailers and terminal distributors of dangerous drugs (and their employees) will generally comply with the bill's prohibition, making violations infrequent. It is likely that revenues collected from violators (fines, court costs, and fees) will offset to some degree the costs that counties and municipalities incur to process minor misdemeanors.
- The bill's qualified civil immunity may create a savings effect for common pleas, municipal, and county courts, as it could reduce the time and effort spent adjudicating certain civil actions.
- Violations of the bill's prohibition may generate a negligible amount of locally collected state court cost revenue annually for crediting to the Indigent Defense Support Fund (Fund 5DY0) and the Victim of Crime/Reparations Fund (Fund 4020).

### Detailed Fiscal Analysis

#### Prohibition

The bill prohibits a retailer or terminal distributor of dangerous drugs (or their employee) from "knowingly" selling or otherwise providing a drug containing dextromethorphan (DXM) to a person under 18 years of age without a prescription. A violation of that prohibition is a minor misdemeanor.

Currently, Ohio has no restrictions in place on the sale, possession, or use of DXM in products that do not require a prescription. Products with DXM are sold at common pharmacy and supermarket retailers. They are relatively inexpensive and easy to purchase.

Presumably, once the bill's prohibition is enacted, retailers and terminal distributors of dangerous drugs (and their employees) will stop DXM sales to persons under 18 without a prescription. Most violations will be first-time offenders and subsequent violations will be relatively few in number.

Under current law, unchanged by the bill, law enforcement can only issue a citation for a minor misdemeanor; the person being cited generally cannot be arrested. If the person pays the associated fine of up to \$150, court costs, and fees, that person is in effect pleading guilty and waiving the requirement that they make a court appearance.

The time and cost to process a minor misdemeanor is relatively low, with most persons cited typically opting to pay the fine, court costs, and fees, and waive a court appearance. This likely means that in many cases the fines, court costs, and fees collected will offset some, if not all, of the cost associated with processing citations.

In addition, a violator will be assessed \$29 in state court costs for a misdemeanor violation, of which \$20 is credited to the Indigent Defense Support Fund (Fund 5DY0) and the remainder, or \$9, is credited to the Victims of Crime/Reparations Fund (Fund 4020). The total amount of state revenue collected annually will be negligible, as the number of violators is expected to be relatively small.

### **Qualified civil immunity**

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

Civil actions seeking such damages would generally fall under the subject matter jurisdiction of common pleas, municipal, and county courts.<sup>1</sup> As a result of the immunity, it is possible that a case may not get filed, or if filed disposed of more quickly. Arguably, either outcome creates a savings effect, as it reduces the time and effort that a court might otherwise have expended on adjudicating certain civil cases.

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<sup>1</sup> The general division of a court of common pleas has original jurisdiction in all civil cases in which the amount in controversy is more than \$15,000. Municipal and county courts have civil jurisdiction that is limited to cases in which the amount of money in dispute does not exceed \$15,000.