



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Audra Tidball

### Sub. H.B. 73

132nd General Assembly  
(As Passed by the House)

**Reps.** Rezabek and Koehler, Bishoff, Ginter, Johnson, LaTourette, Anielski, Antonio, Arndt, Ashford, Barnes, Conditt, Craig, Duffey, Fedor, Green, Greenspan, Kent, Landis, Leland, Manning, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Reineke, Rogers, Scherer, Schuring, R. Smith, Sweeney, West, Young

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### 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.
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### 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.<sup>1</sup>

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.<sup>2</sup>

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

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

"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.<sup>5</sup>

## **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.<sup>6</sup>

## **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.<sup>7</sup>

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<sup>3</sup> R.C. 2925.62(C).

<sup>4</sup> R.C. 2925.62(D).

<sup>5</sup> R.C. 2925.62(A)(2).

<sup>6</sup> R.C. 2925.62(F).

<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	02-21-17
Reported, H. Health	03-29-17
Passed House (92-4)	03-30-17

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<sup>8</sup> R.C. 2925.62(H).

<sup>9</sup> R.C. 2925.62(E).

