

CHAPTER 211

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 18-1307

BY REPRESENTATIVE(S) Singer and Lee, Buckner, Esgar, Ginal, Hamner, Liston, Lontine, Pabon, Pettersen, Winter, Young;
also SENATOR(S) Gardner and Cooke, Coram, Crowder, Priola.

AN ACT

**CONCERNING RESTRICTING THE AVAILABILITY TO CHILDREN OF PRODUCTS THAT CONTAIN
DEXTROMETHORPHAN.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 18-18-406.9 as follows:

18-18-406.9. Unlawful distribution or purchase of dextromethorphan - penalty - preemption - definitions. (1) IT IS UNLAWFUL FOR A SELLER, RETAILER, OR VENDOR TO KNOWINGLY OR WILLFULLY DISPENSE, SELL, OR DISTRIBUTE A FINISHED DRUG PRODUCT CONTAINING ANY QUANTITY OF DEXTROMETHORPHAN TO A PERSON LESS THAN EIGHTEEN YEARS OF AGE.

(2) (a) A SELLER, RETAILER, OR VENDOR 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 THE SELLER, RETAILER, OR VENDOR REASONABLY PRESUMES FROM THE PURCHASER'S OUTWARD APPEARANCE THAT THE PURCHASER IS AT LEAST TWENTY-FIVE YEARS OF AGE.

(b) THIS SECTION DOES NOT REQUIRE A RETAIL ENTITY TO:

(I) PLACE PRODUCTS IN A SPECIFIC PLACE WITHIN A STORE;

(II) IMPOSE OTHER RESTRICTIONS ON CONSUMERS' DIRECT ACCESS TO FINISHED DRUG PRODUCTS; OR

(III) MAINTAIN TRANSACTION RECORDS.

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(3) A SELLER, RETAILER, OR VENDOR WHO VIOLATES SUBSECTION (1) OR (2)(a) OF THIS SECTION COMMITS AN UNCLASSIFIED PETTY OFFENSE AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED AS FOLLOWS:

(a) FOR A FIRST OFFENSE, THE COURT SHALL ISSUE A WRITTEN WARNING TO THE SELLER, RETAILER, OR VENDOR; AND

(b) FOR A SECOND OR SUBSEQUENT OFFENSE, THE SELLER, RETAILER, OR VENDOR SHALL PAY A FINE OF NOT MORE THAN TWO HUNDRED DOLLARS.

(4) THIS SECTION DOES NOT APPLY TO A MEDICATION CONTAINING DEXTROMETHORPHAN, WHICH MEDICATION IS SOLD PURSUANT TO A VALID PRESCRIPTION.

(5) IF A SELLER, RETAILER, OR VENDOR IS AN EMPLOYER AND TRAINS ITS EMPLOYEES CONCERNING THIS SECTION'S RESTRICTIONS ON THE DISTRIBUTION OF MEDICATIONS CONTAINING DEXTROMETHORPHAN, SUCH FACT IS AN AFFIRMATIVE DEFENSE TO ANY PROSECUTION FOR AN OFFENSE DESCRIBED IN THIS SECTION.

(6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FINISHED DRUG PRODUCT" MEANS A DRUG LEGALLY MARKETED UNDER THE "FEDERAL FOOD, DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ., THAT IS IN FINISHED DOSAGE FORM.

(b) "PROOF OF AGE" MEANS ANY DOCUMENT ISSUED BY A GOVERNMENTAL AGENCY THAT CONTAINS A DESCRIPTION OR PHOTOGRAPH OF THE PERSON AND GIVES THE PERSON'S DATE OF BIRTH, INCLUDING A PASSPORT, MILITARY OR STATE IDENTIFICATION CARD, OR DRIVER'S LICENSE.

(7) THE GENERAL ASSEMBLY FINDS THAT THE REGULATION OF ACCESS TO PRODUCTS CONTAINING DEXTROMETHORPHAN IS A MATTER OF STATEWIDE CONCERN, AND, THEREFORE, THIS SECTION PREEMPTS ANY ORDINANCE OR CODE OF ANY CITY, COUNTY, CITY AND COUNTY, TOWN, OR OTHER POLITICAL SUBDIVISION OF THIS STATE REGULATING THE DISTRIBUTION OR PURCHASE OF DEXTROMETHORPHAN.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 11, 2018