

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1061.01 Richard Sweetman x4333

HOUSE BILL 18-1307

HOUSE SPONSORSHIP

Singer and Lee,

SENATE SPONSORSHIP

Gardner and Cooke,

House Committees

Health, Insurance, & Environment

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill states that 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 18 years of age. 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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

unless the seller, retailer, or vendor reasonably presumes from the purchaser's outward appearance that the purchaser is at least 25 years of age.

A seller, retailer, or vendor who violates the prohibition or who fails to obtain proof of age when required to do so commits an unclassified petty offense and, upon conviction thereof, shall be punished as follows:

! For a first offense, the court shall warn the seller, retailer, or vendor in writing; and

! For a second or subsequent offense, the seller, retailer, or vendor shall pay a fine of not more than \$200.

The prohibition does not apply to a medication containing dextromethorphan, which medication is sold pursuant to a valid prescription. It is an affirmative defense if the seller, retailer, or vendor is an employer and trains its employees concerning the bill's restrictions on the distribution of medications containing dextromethorphan.

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

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

4 **18-18-406.9. Unlawful distribution or purchase of**
5 **dextromethorphan - penalty - preemption - definitions.** (1) IT IS
6 UNLAWFUL FOR A SELLER, RETAILER, OR VENDOR TO KNOWINGLY OR
7 WILLFULLY DISPENSE, SELL, OR DISTRIBUTE A FINISHED DRUG PRODUCT
8 CONTAINING ANY QUANTITY OF DEXTROMETHORPHAN TO A PERSON LESS
9 THAN EIGHTEEN YEARS OF AGE.

10 (2) (a) A SELLER, RETAILER, OR VENDOR MAKING A RETAIL SALE
11 OF A FINISHED DRUG PRODUCT CONTAINING ANY QUANTITY OF
12 DEXTROMETHORPHAN MUST REQUIRE AND OBTAIN PROOF OF AGE FROM
13 THE PURCHASER BEFORE COMPLETING THE SALE UNLESS THE SELLER,
14 RETAILER, OR VENDOR REASONABLY PRESUMES FROM THE PURCHASER'S
15 OUTWARD APPEARANCE THAT THE PURCHASER IS AT LEAST TWENTY-FIVE
16 YEARS OF AGE.

1 (b) THIS SECTION DOES NOT REQUIRE A RETAIL ENTITY TO:
2 (I) PLACE PRODUCTS IN A SPECIFIC PLACE WITHIN A STORE;
3 (II) IMPOSE OTHER RESTRICTIONS ON CONSUMERS' DIRECT ACCESS
4 TO FINISHED DRUG PRODUCTS; OR
5 (III) MAINTAIN TRANSACTION RECORDS.

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

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

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

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

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

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

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

27 (b) "PROOF OF AGE" MEANS ANY DOCUMENT ISSUED BY A

1 GOVERNMENTAL AGENCY THAT CONTAINS A DESCRIPTION OR PHOTOGRAPH
2 OF THE PERSON AND GIVES THE PERSON'S DATE OF BIRTH, INCLUDING A
3 PASSPORT, MILITARY OR STATE IDENTIFICATION CARD, OR DRIVER'S
4 LICENSE.

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

11 **SECTION 2. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2018 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.