



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**FISCAL NOTE**

<b>Drafting Number:</b>	LLS 18-1061	<b>Date:</b>	March 28, 2018
<b>Prime Sponsors:</b>	Rep. Singer; Lee Sen. Gardner; Cooke	<b>Bill Status:</b>	House Health, Insurance, and Environment
		<b>Fiscal Analyst:</b>	Chris Creighton   303-866-5834 Chris.Creighton@state.co.us

**Bill Topic:** LIMIT ACCESS TO PRODUCTS WITH DEXTROMETHORPHAN

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure ( <i>minimal</i> )	<input checked="" type="checkbox"/> Local Government ( <i>minimal</i> )
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill makes it unlawful to sell or knowingly dispense medication containing any quantity of dextromethorphan to a person under the age of 18. This bill increases state and local government revenue and expenditures by a minimal amount.

**Appropriation Summary:** No appropriation required.

**Fiscal Note Status:** This fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts under HB 18-1307**

		<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Revenue</b>	General Fund and Cash Funds	less than \$5,000	less than \$5,000
<b>Expenditures</b>		-	-
<b>Transfers</b>		-	-
<b>TABOR Refund</b>	General Fund	less than \$5,000	less than \$5,000

## Summary of Legislation

This bill makes it unlawful to sell or knowingly dispense medication containing any quantity of dextromethorphan to a person under the age of 18. Anyone selling a medication containing dextromethorphan must obtain proof of age as specified in the bill, unless he or she reasonably believes the purchaser is at least 25 years old. This bill does not require any restrictions on consumer access to medication containing dextromethorphan, does not require transaction record keeping, and does not apply to medication sold pursuant to a valid prescription.

Any violation is a unclassified petty offense. The court must issue a written warning upon conviction for a first offense. A fine penalty of no more than \$200 may be ordered by the court for any second or subsequent offense. This bill also makes training employees concerning restrictions on the distribution of medications containing dextromethorphan an affirmative defense to any prosecution for the offense created by this bill.

## Background

Dextromethorphan is a cough suppressant that can be found in some over-the-counter cough and cold medicines.

## Comparable Crime

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates a new crime by making it unlawful to sell or knowingly dispense medication containing dextromethorphan to a person under the age of 18. To form an estimate on the prevalence of this new crime, data on the failure to check an ID when selling tobacco and on furnishing tobacco to a minor was analyzed.

- Since 2015, there have been 96 convictions for the failure to check an ID when selling tobacco (44 Male, 52 Female; 88 Caucasian, 6 Asian, and 2 African American).
- Since 2015, there have been 240 convictions for furnishing tobacco to a minor (129 Male, 110 Female, 1 Unknown; 202 Caucasian, 15 African American; 9 Asian; 7 Unknown, 4 Hispanic; 2 Other, 1 Indian).

This analysis assumes the crime of selling or knowingly dispensing medication containing dextromethorphan will be less prevalent than selling tobacco to a minor and that there will be less than 10 convictions per year.

## State Revenue

Beginning in FY 2018-19, this bill is anticipated to increase state revenue by less than \$5,000 per year.

**Criminal fines.** The bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class petty offense of selling or knowingly dispensing medication containing dextromethorphan

is no more than \$200 for a second and subsequent offense. Because the courts have the discretion in the amount of the fines imposed, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed by the courts, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

**Court and administrative fees.** The bill will also increase state revenue from court and administrative fees credited to the General Fund and to various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Some fee revenue is shared with local governments; refer to the Local Government Impact section for additional information.

## TABOR Refund

On net, this bill increases state General Fund and cash fund revenue subject to TABOR, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20 by less than \$5,000 per year.

For FY 2018-19, the bill increases the TABOR refund obligation by less than \$5,000 while increasing General Fund and cash fund revenue by at least \$5,000, resulting in a net decrease of at least \$5,000 in the amount available for the General Fund budget. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

## State Expenditures

Beginning in FY 2018-19, this bill increases Judicial Department expenditures and workload by a minimal amount as described below.

**Judicial Department.** By creating a new crime, this bill increases trial court workload to hear cases related to selling or knowingly dispensing medication containing dextromethorphan. Workload further increases for first time offenders as the court must issue a written warning upon conviction. Because a high level of compliance and less than ten convictions are assumed per year, this workload increase is considered to be minimal.

**Agencies providing representation to indigent persons.** Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase under this bill to represent indigent offenders. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

## Local Government Impact

Overall, this bill is expected to increase local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction, but is expected to be minimal.

**District attorneys.** The bill increases workload and costs for district attorneys to prosecute any new offenses under the bill.

**Denver County Court.** The bill results in an increase in criminal fine and fee revenue and workload for the Denver County Court, to try cases of selling or knowingly dispensing medication containing dextromethorphan within its jurisdiction.

## Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

## State and Local Government Contacts

District Attorneys  
Public Health and Environment

Judicial  
Regulatory Agencies