

FINAL BILL REPORT

2SHB 2163

C 64 L 14
Synopsis as Enacted

Brief Description: Establishing dextromethorphan provisions.

Sponsors: House Committee on Appropriations Subcommittee on General Government & Information Technology (originally sponsored by Representatives Harris, Haler and Morrell).

House Committee on Public Safety
House Committee on Appropriations Subcommittee on General Government & Information Technology
Senate Committee on Health Care

Background:

Dextromethorphan (DXM or DM) is an antitussive (cough suppressant) drug. The primary use of dextromethorphan is as a cough suppressant, for the temporary relief of a cough caused by minor throat and bronchial irritation (such as that which commonly accompanies the flu and common cold), as well as an irritation resulting from inhaled particle irritants. It is one of the active ingredients in many over-the-counter (OTC) cold and cough medicines, including generic labels and store brands.

Dextromethorphan is a synthetically produced substance that is chemically related to codeine, though it is not an opiate. It is an ingredient in more than 140 OTC cough and cold remedies since the 1950s, and has gradually replaced codeine as the most widely used cough suppressant in the United States. Dextromethorphan also has other uses in medicine, ranging from pain relief to psychological applications. It is sold in syrup, spray, capsule, liquid, liquid gelatin capsule, lozenge, and tablet forms. It also is available in powdered form on the Internet—typically for sale to laboratories conducting research on DM. In its pure form DM occurs as a white powder.

When ingested at recommended dosage levels, DM generally is safe and is known as a highly effective cough suppressant; however, when ingested in larger amounts, DM produces negative physiological effects. Reports of DM abuse have resulted in monitoring by the Drug Enforcement Administration (DEA).

Slang terms for DM include: DM, robo, rojo, and velvet. Slang terms for DXM intoxication include: robo tripping, skittling, and dexing.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

On January 29, 2014, federal legislation was introduced in the U.S. House of Representatives to address issues relating to the sale of DM products to minors. In that legislation, which is not yet enacted, Congress is considering provisions to allow the purchase of DM by individuals under age 18 who possess military IDs, are emancipated minors, or have a valid prescription.

In 2003 legislation was introduced in Texas and North Dakota to prohibit the sale of DM to minors. The proposed legislation was not enacted in either state. However, five other states have enacted legislation to ban or limit the sale of DM products to minors. In 2011 California became the first state to prohibit the sale of OTC cough medicines containing the active ingredient DM to minors. Minnesota, New York, and Pennsylvania have since enacted measures to regulate DM products to minors and making it an infraction with penalties ranging from \$250 to \$500. Some retail stores including Rite Aid and Wal-Mart chains currently have policies that require identification for purchase of medications containing DM.

Summary:

New crimes and penalties are created for receiving, possessing, and distributing DM products. A retailer selling a finished drug product containing any quantity of DM must require and obtain proof of age from the purchaser before completing the sale, unless it can reasonably be presumed that the purchaser is 25 years of age or older.

A person under the age of 18 may purchase a DM product if he or she: (1) is actively enrolled in the military and presents a valid identification at the time of the sale; or (2) is an emancipated minor. In all other cases, it is illegal for:

- any manufacturer, distributor, or retailer whose employee or representative during the course of the employee's or representative's employment or association with that entity, to knowingly or willfully sell or trade any quantity of a finished DM product to a minor under the age of 18 years old;
- any employee or representative of a commercial entity, during the course of his or her employment or association with the employer, to sell or trade any quantity of a finished DM product to a minor under the age of 18 years old; or
- a minor under the age of 18 years old to purchase a finished drug product containing any quantity of DM.

Law enforcement must issue a written warning for the first violation of the act. Except in an instance where a manufacturer, distributor, or retailer can demonstrate a good faith effort to comply with the law, any second or subsequent violation of the act is a class 1 civil infraction punishable by a maximum fine of \$250.

The trade association representing manufacturers of DM products must: (1) supply retailers and the Pharmacy Quality Assurance Commission with a list of all products that contain DM, which must be updated annually; and (2) must make reasonable efforts to communicate the requirements of the act.

Nothing in the act is to be construed to impose any compliance requirement on any retailer other than manually obtaining and verifying proof of age as a condition of sale, including

placement of products within a store, other restrictions on consumers' direct access to finished drug products, or the maintenance of transaction records. Medication containing DM that is sold pursuant to a valid prescription is exempt from the act. Any ordinance regulating the sale, distribution, receipt, or possession of DM enacted by a county, city, town, or other political subdivision of Washington is preempted, and DM is not subject to further regulation by such subdivisions.

"Finished drug product" means a drug legally marketed under the Federal Food, Drug, and Cosmetic Act, that is in finished dosage form.

"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 identification card, or driver's license.

Votes on Final Passage:

House	91	7	
Senate	49	0	(Senate amended)
House	86	12	

Effective: July 1, 2015