



# Ohio Legislative Service Commission

## Bill Analysis

Audra Tidball

### H.B. 197

131st General Assembly  
(As Passed by the House)

**Reps.** Rezabek, T. Johnson, Sprague, M. O'Brien, Manning, Boose, Koehler, LaTourette, R. Smith, Huffman, Brown, Antonio, Arndt, Ashford, Barnes, Buchy, Burkley, Celebrezze, Duffey, Ginter, Green, Hackett, Hambley, Kunze, Landis, McColley, S. O'Brien, Perales, Ruhl, Schaffer, Sheehy

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## BILL SUMMARY

- Prohibits a retailer or terminal distributor of dangerous drugs 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 or terminal distributor of dangerous drugs, or an employee of a retailer or terminal distributor, from knowingly supplying, delivering, giving, or otherwise providing a drug, material, compound, mixture, preparation, or

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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>.

substance containing any quantity of dextromethorphan to a person under 18 in an over-the-counter sale without a prescription.<sup>2</sup>

### **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 bona fide evidence of majority and identity.<sup>3</sup> Proof that a person demanded, was shown, and reasonably relied on bona fide evidence of majority and identity is a defense to criminal prosecution for violation of the bill's prohibition.<sup>4</sup>

"Bona fide 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, persons that sell dextromethorphan or dextromethorphan-containing products in over-the-counter sales 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 bona fide evidence of majority and identity before a product containing dextromethorphan may be purchased.<sup>6</sup>

### **Penalty**

The bill makes it a minor misdemeanor to violate its prohibition against supplying dextromethorphan to a person under 18.<sup>7</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

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<sup>2</sup> R.C. 2925.62(B).

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

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

<sup>5</sup> R.C. 2925.62(A)(1).

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

<sup>7</sup> R.C. 2925.62(G).

provisions, or subject to any penalties, unless the clerk is a willful participant in an ongoing conspiracy to violate the prohibition.<sup>8</sup>

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## HISTORY

ACTION	DATE
Introduced	05-11-15
Reported, H. Health & Aging	10-07-15
Passed House (92-2)	12-01-15

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

