

PROHIBIT SALE OF DEXTROMETHORPHAN TO MINORS

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House Bill 4412 (H-1) as referred to second committee

Sponsor: Rep. Bronna Kahle

1st Committee: Health Policy

2nd Committee: Ways and Means

Complete to 5-20-19

Analysis available at

<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4412 would amend the Public Health Code to provide that, except for a medication sold under a valid prescription, a person could not dispense to a minor, and a minor could not purchase, a finished drug product containing dextromethorphan, also known as DXM. DXM is most often used as a cough suppressant in over-the-counter cough and cold medicines.

FISCAL IMPACT: House Bill 4412 would have an indeterminate fiscal impact on the state and local units of government, and would likely have a modest fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). See **Fiscal Information**, below, for further discussion.

THE APPARENT PROBLEM:

While DXM is safe when used as indicated, it has become one of the over-the-counter drugs most often abused by teenagers in recent years. The most commonly misused sources of DXM are “extra strength” cough syrup, tablets, and gel capsules, but it is also found in antihistamines and decongestants. Beginning with California in 2011, at least 16 states have prohibited the sale of DXM-containing products to minors.¹

THE CONTENT OF THE BILL:

House Bill 4412 would amend the Public Health Code to provide that, except for a medication sold under a valid prescription, a person could not dispense to a minor, and a minor could not purchase, a finished drug product containing dextromethorphan.

When making a retail sale of a finished dextromethorphan product, a person would have to obtain proof of age from the purchaser before completing the sale, unless the purchaser reasonably appeared to be at least 25 years old.

A person who violated the prohibition on knowingly or willfully selling or trading a dextromethorphan product to a minor would be subject to a letter from the director of LARA for a first violation, a fine of up to \$50 for a second violation, and a fine of up to \$100 for a third or subsequent violation. Any individual could report a violation of the

¹ Alaska, Arizona, California, Colorado, Delaware, Florida, Kentucky, Louisiana, New Jersey, New York, Nevada, Oregon, Tennessee, Virginia, Washington, Wisconsin. <https://www.chpa.org/ColoradoDXMpress.aspx>

prohibition to LARA. A minor who purchased a dextromethorphan product would be subject to a civil fine of \$50.

The bill states that the prohibition would preempt local ordinances or resolutions regulating the sale, distribution, receipt, or possession of dextromethorphan. Additionally, local units could not enact or enforce an ordinance or resolution conflicting with the provisions in the bill.

The bill would take effect January 1, 2020.

Proposed MCL 333.17766g

FISCAL INFORMATION:

House Bill 4412 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of offenders who are assigned civil fines under provisions of the bill. There could be costs for the judiciary and local court systems depending on how provisions of the bill affected caseloads and related administrative costs. There could be an increase in revenue for the state, as civil fine revenue typically is deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4412 would likely have a modest fiscal impact on LARA, due to potential cost increases for administrative enforcement activities. The bill would also likely result in increased civil fine revenues resulting from fines assessed for violations of the bill. Under the bill, individuals could report violations of bill provisions to LARA. The department would have to intake and investigate these allegations, though these activities may be accomplished utilizing current funding and staffing levels. The bill would also establish the following civil fine schedule for individuals who knowingly or willfully sold or traded finished drug products containing dextromethorphan to a minor:

Offense	Penalty
First violation selling/trading to a minor	Warning letter from LARA
Second violation selling/trading to a minor	Civil fine not to exceed \$50
Third or subsequent violation selling/trading to a minor	Civil fine not to exceed \$100

A civil fine of \$50 would also be established for minors who purchase a finished drug product containing dextromethorphan. The level of revenue from these fines would depend on the number of violations.

ARGUMENTS:

Against:

Some wondered whether a better approach to combating abuse of DMX by minors would be to move the product behind the counter. In response, supporters of the bill argued that adults should have unfettered access to the drug and that a move to behind-the-counter status would adversely affect this ability.

POSITIONS:

A representative of Consumer Healthcare Products Association testified in support of the bill. (5-2-19)

The following organizations indicated support for the bill (5-2-19):

Michigan Pharmacists Association
Michigan Retailers Association
Michigan Association of Health Plans

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.