

## PROHIBIT SALE OF DEXTROMETHORPHAN TO MINORS

Phone: (517) 373-8080

<http://www.house.mi.gov/hfa>

House Bill 4412 as enacted

Public Act 123 of 2019

Sponsor: Rep. Bronna Kahle

1st House Committee: Health Policy

2nd House Committee: Ways and Means

Senate Committee: Health Policy and Human Services

Complete to 1-24-20

Analysis available at

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

**BRIEF SUMMARY:** House Bill 4412 amends the Public Health Code to provide that, except for a medication sold under a valid prescription, a person may not dispense to a minor, and a minor may not purchase, a finished drug product containing dextromethorphan, also known as DXM. DXM is used most often 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. 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.<sup>1</sup>

### **THE CONTENT OF THE BILL:**

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

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

A person who violates the prohibition on knowingly or willfully selling or trading a dextromethorphan product to a minor is responsible for a state civil infraction and may be ordered to pay a civil fine of up to \$100 for each violation. A minor who purchases a dextromethorphan product is likewise be responsible for a state civil infraction and may be ordered to pay a civil fine of up to \$50 for each violation.

---

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

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

The bill takes effect July 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. Unless otherwise stated, civil fines ordered for violations under the Revised Judicature Act are to be applied exclusively to the support of public libraries and county law libraries. In addition to civil fines ordered to be paid, the Revised Judicature Act requires judges or district court magistrates to order defendants to pay a justice system assessment of \$10. The assessment portion of the total fine ordered is deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and in the Departments of State Police, Corrections, Health and Human Services, and Treasury. The costs to local court systems would depend on how provisions of the bill affect caseloads and related administrative costs.

***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.

Legislative Analyst: Jenny McInerney  
Fiscal Analyst: Robin Risko

---

■ 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.