



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4412 (Substitute H-1 as passed by the House)

Sponsor: Representative Bronna Kahle

House Committee: Health Policy

Ways and Means

Senate Committee: Health Policy and Human Services

Date Completed: 9-11-19

### **CONTENT**

**The bill would amend Part 177 (Pharmacy Practice and Drug Control) of the Public Health Code to do the following:**

- **Prohibit a person from knowingly or willfully selling or trading a finished drug product containing any quantity of dextromethorphan to a minor.**
- **Require a person making a retail sale of a finished drug product containing any quantity of dextromethorphan to obtain proof of age from the purchaser before completing the sale.**
- **Preempt any county, city, village, or township ordinance regulating the sale, distribution, receipt, or possession of dextromethorphan.**
- **Prescribe fines and penalties for violations of the proposed prohibitions.**
- **Specify that the bill would not apply to a medication containing dextromethorphan that was sold pursuant to a valid prescription.**

The bill would take effect on January 1, 2020.

Under the bill, except as otherwise provided, a person could not knowingly or willfully sell or trade a finished drug product containing any quantity of dextromethorphan to a minor. "Dextromethorphan" would mean the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts. "Finished drug product" would mean that term as defined in 21 CFR 207.1: a finished dosage form (e.g., tablet, capsule, or solution) that contains at least one active pharmaceutical ingredient, generally, but not necessarily, in association with other ingredients in finished package form suitable for distribution to pharmacies, hospitals, or other sellers or dispensers of the drug product to patients or consumers.

A person making a retail sale of a finished drug product containing any quantity of dextromethorphan would have to require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be at least 25 years of age. "Proof of age" would mean a valid government-issued photo identification that includes the purchaser's name and date of birth, including a military identification card, passport, or driver license.

The bill would preempt any county, city, village, or township ordinance or resolution regulating the sale, distribution, receipt, or possession of dextromethorphan. A county, city, village, or township could not enact, adopt, maintain, or enforce an ordinance or resolution that imposed conflicting, different, or additional standards of requirements than those provided in the bill.

The bill also specifies that, except as otherwise provided, a minor could not purchase a finished drug product containing any quantity of dextromethorphan.

### Violations

Under the bill, any individual could report a violation of the bill's provisions to the Department of Licensing and Regulatory Affairs. A person that knowingly or willingly sold or traded a finished drug product containing any quantity of dextromethorphan to a minor would be subject to the following:

- For a first violation, a warning letter from the Director of the Department.
- For a second violation, a civil fine of up to \$50.
- For a third or subsequent violation, a civil fine of up to \$100.

A minor who purchased a finished drug product containing any quantity of dextromethorphan would be subject to a \$50 civil fine.

### **BACKGROUND**

Dextromethorphan is an over-the-counter cold medicine used to treat a cough by suppressing a person's cough reflex. Dextromethorphan generally comes in liquid, tablet, dissolving strip, or lozenge form. The usual dosage recommendation is 15 to 30 milligrams at a rate of three to four times daily. Reportedly, some individuals abuse dextromethorphan. According to the Drug Enforcement Administration (DEA), abusing dextromethorphan can cause a heightened sense of perceptual awareness, altered time perception, and visual hallucinations. Abuse may result liver damage, central nervous system toxicity, or cardiovascular toxicity. The DEA also reports that the abuse of dextromethorphan in combination with alcohol or other drugs can be dangerous, and may result in death.

Proposed MCL 333.17766g

Legislative Analyst: Tyler VanHuyse

### **FISCAL IMPACT**

The bill would have a minor negative fiscal impact on the Department of Licensing and Regulatory Affairs. The administrative costs associated with enforcement likely would increase by a minor but unknown amount; however, existing appropriations could be sufficient to fund these activities. It is unclear where revenue from the civil fines described in the bill would be deposited. The magnitude of the costs and new revenue would depend on the number of violations identified and pursued by the Department.

Fiscal Analyst: Elizabeth Raczowski

SAS\S1920\s4412sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.