

BILL ANALYSIS

Senate Research Center
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H.B. 1518
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised about minors abusing the cough suppressant dextromethorphan, which is contained in several over-the-counter medications. It is much easier for a minor to obtain than alcohol or other substances, and can lead to serious side effects if used in high doses.

H.B. 1518 seeks to prevent such abuse by establishing a minimum age for the purchase of medicines that contain dextromethorphan and establishing certain enforcement measures.

H.B. 1518 amends current law relating to the regulation of the sale of dextromethorphan to minors and provides civil penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 6, Health and Safety Code, by adding Chapter 488, as follows:

CHAPTER 488. OVER-THE-COUNTER SALES OF DEXTROMETHORPHAN

Sec. 488.001. DEFINITIONS. (a) Defines "dextromethorphan" and "sale" for purposes of this chapter.

(b) Provides that a term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002 (Definitions) if the term is defined in that section.

Sec. 488.002. NONAPPLICABILITY. (a) Provides that this chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose within the scope of the practitioner's practice as authorized by the practitioner's license issued under Title 3 (Health Professions), Occupations Code.

(b) Provides that this chapter does not requires a business establishment to keep specific records of transactions covered by this chapter or store dextromethorphan in a specific location in a business establishment or otherwise restrict the availability of dextromethorphan to customers.

Sec. 488.003. DISTRIBUTION TO MINORS PROHIBITED; PREREQUISITE TO SALE. (a) Prohibits a business establishment from dispensing, distributing, or selling dextromethorphan to a customer under 18 years of age.

(b) Requires a business establishment, before dispensing, distributing, or selling dextromethorphan over the counter, to require the customer obtaining the drug to display a driver's license or other form of identification containing the customer's

photograph and indicating that the customer is 18 years of age or older, unless from the customer's outward appearance the person making the sale may reasonably presume the customer to be 27 years of age or older.

Sec. 488.004. VIOLATION; CIVIL PENALTY. (a) Requires a county or district attorney to issue a warning to a business establishment for a first violation of this chapter.

(b) Provides that after receiving a warning for the first violation under Subsection (a), a business establishment is liable to the state for a civil penalty of \$150 for the second violation and \$250 for each subsequent violation.

(c) Provides that it is a defense in an action brought under this section that the person to whom the dextromethorphan was dispensed, distributed, or sold presented to the business establishment apparently valid proof of identification.

(d) Provides that a proof of identification satisfies the requirements of Subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. Authorizes the proof of identification to include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(e) Provides that it is a defense in an action brought under this section that the business establishment made a good faith effort to comply with this section.

Sec. 488.005. PROHIBITED LOCAL REGULATION. (a) Prohibits a political subdivision of this state from adopting or enforcing an ordinance, order, rule, regulation, or policy that governs the sale, distribution, or possession of dextromethorphan.

(b) Provides that an ordinance, order, rule, regulation, or policy described by Subsection (a) is void and unenforceable.

SECTION 2. (a) Makes application of Sections 488.003 and 488.004, Health and Safety Code, as added by this Act, prospective.

(b) Provides that Section 488.005, Health and Safety Code, as added by this Act, applies to an ordinance, order, rule, regulation, or policy adopted before, on, or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2019.