

## **BILL ANALYSIS**

Senate Research Center  
86R4345 JSC-D

S.B. 349  
By: Seliger  
Health & Human Services  
3/21/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

#### **Background**

Every year for over 50 years, millions of Americans have used over-the-counter (OTC) medicines containing dextromethorphan (DXM) to relieve cough symptoms, which in moderation is completely safe. However, according to a study by Stop Medicine Abuse, one out of three teenagers know someone who has purposefully ingested large amounts of cough medicine containing DXM to get high. At doses of over eight times the recommended usage, DXM can produce hallucinations, confusion, blurred vision, nausea, excessive fatigue, and loss of motor control.

#### **Key Provisions of S.B. 349**

- Prohibits the sale of dextromethorphan to those under 18 years of age without a prescription.
- Requires identification proving the buyer is 18 years of age or older before purchase.
- After being issued a warning for the first offense, the business entity is liable for a civil penalty of:
  - \$150 for the second violation; and
  - \$250 for each subsequent violation.

#### **Support**

- Consumer Healthcare Products Association, its member companies, and other interested parties such as the American Association of Poison Control Centers, the Boys & Girls Clubs of America, Drug Abuse Resistance Education, the National Alliance for Hispanic Health, the National Association of School Nurses, the National Consumers League, the Partnership at Drugfree.org, and Safe Kids Worldwide.

As proposed, S.B. 349 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."

(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 and in the course of a professional practice.

(b) Provides that this chapter does not require a business establishment to keep specific records of transactions covered by this chapter or to 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 a business establishment, after receiving a warning for the first violation under Subsection (a), 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 requirement 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. Provides that the proof of identification may 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.

SECTION 2. Provides that the change in law made by this Act applies only to a transaction at a business establishment that occurs on or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2019.