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**Public Safety Committee**

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**HB 2163**

**Brief Description:** Establishing dextromethorphan provisions.

**Sponsors:** Representatives Harris, Haler and Morrell.

**Brief Summary of Bill**

- Makes it a misdemeanor offense for: (1) a commercial entity to sell or trade dextromethorphan (DM) to a minor, unless the entity demonstrates a good faith effort to comply with the statute; (2) an employee of a commercial entity to sell or trade DM to a minor; or (3) a minor to purchase a product containing DM.
- Makes it a class C felony offense for a person to: (1) possess or receive unfinished DM with intent to distribute, unless registered under the Federal Food, Drug, and Cosmetic Act (FD&C Act) or licensed with the Pharmacy Quality Assurance Commission; or (2) distribute unfinished DM to any person other than a person registered under the FD&C Act or licensed with the Pharmacy Quality Assurance Commission.

**Hearing Date:** 1/24/14

**Staff:** Yvonne Walker (786-7841).

**Background:**

Dextromethorphan (DXM or DM) is an antitussive (cough suppressant) drug. The primary use of dextromethorphan is as a cough suppressant, for the temporary relief of cough caused by minor throat and bronchial irritation (such as commonly accompanies the flu and common cold), as well as those resulting from inhaled particle irritants. It is one of the active ingredients in many over-the-counter (OTC) cold and cough medicines, including generic labels and store brands, such as Benylin DM, Mucinex DM, Robitussin, NyQuil, Dimetapp, Vicks, Coricidin, Delsym, TheraFlu, and others.

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Dextromethorphan has also other uses in medicine, ranging from pain relief to psychological applications. It is sold in syrup, spray, capsule, liquid, liquid gelatin capsule, lozenge, and tablet forms. It also is available in powdered form on the Internet—typically for sale to laboratories conducting research on DM. In its pure form, DM occurs as a white powder.

Dextromethorphan is a synthetically produced substance that is chemically related to codeine, though it is not an opiate. Dextromethorphan is an ingredient in more than 140 over-the-counter cough and cold remedies and since the 1950s and has gradually replaced codeine as the most widely used cough suppressant in the United States.

When ingested at recommended dosage levels, DM generally is a safe and highly effective cough suppressant; however, when ingested in larger amounts, DM produces negative physiological effects. Reports of DM abuse have resulted in monitoring by the Drug Enforcement Administration (DEA).

Slang terms for DM include: DM, robo, rojo, and velvet. Slang terms for DXM intoxication include: robo tripping, skittling, and dexing.

In 2003 legislation was introduced in Texas and North Dakota to prohibit the sale of DM to minors. The proposed legislation did not pass in either state. However, five states have enacted legislation to ban or limit the sale of DM products to minors. In 2011 California became the first state to prohibit the sale of OTC cough medicines containing the active ingredient DM to minors. Minnesota, New York, and Pennsylvania have since enacted measures to regulate DM products to minors and making it an infraction with penalties ranging from \$250 to \$500. Some retail stores including Rite Aid and Wal-Mart chains currently have policies that require identification for purchase of medications containing DM.

### **Summary of Bill:**

New crimes and penalties are created for receiving, possessing, and distributing DM products. A retailer selling a finished drug product containing any quantity of DM must require and obtain proof of age from the purchaser before completing the sale, unless it can reasonably be presumed that the purchaser is 25 years of age or older.

It is a misdemeanor offense for:

- any commercial entity (manufacturer, distributor, or retailer whose employee or representative during the course of the employee's or representative's employment or association with that entity) to knowingly or willfully sell or trade any quantity of DM to a minor under the age of 18 years old (except for a retailer that demonstrates a good faith effort to comply with the statute);
- any employee or representative of a commercial entity, during the course of his or her employment or association with the employer, to sell or trade any quantity of DM to a minor under the age of 18 years old; or
- a minor under the age of 18 years old to purchase a finished drug product containing any quantity of DM.

A misdemeanor offense is punishable by a sentence of up to 90 days in jail or a maximum fine of \$1,000, or both imprisonment and a fine.

It is an unranked class C felony offense for a person to:

- possess or receive unfinished DM with intent to distribute, unless he or she is registered under the Federal Food, Drug, and Cosmetic Act (FD&C Act) or is appropriately licensed with the Pharmacy Quality Assurance Commission; or
- distribute unfinished DM to any person other than a person registered under the FD&C Act or appropriately licensed with the Pharmacy Quality Assurance Commission.

The maximum sentence for unranked felonies is one year of confinement in jail, along with possible community restitution, legal financial obligations, and up to one year of community custody.

This act does not apply to a common carrier that possesses, receives, or distributes unfinished DM for purposes of distributing such unfinished DM between persons registered under the FD&C Act or appropriately licensed with the Pharmacy Quality Assurance Commission.

Nothing in this act is construed to impose any compliance requirement on any retail entity other than manually obtaining and verifying proof of age as a condition of sale, including placement of products in a specific place within a store, other restrictions on consumers' direct access to finished drug products, or the maintenance of transaction records. Medication containing DM that is sold pursuant to a valid prescription is exempt from the act. Any ordinance regulating the sale, distribution, receipt, or possession of DM enacted by a county, city, town, or other political subdivision of Washington is preempted by this act, and DM is not subject to further regulation by such subdivisions.

"Common carrier" means any person who holds himself or herself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

"Finished drug product" means a drug legally marketed under the FD&C Act, which is in finished dosage form.

"Proof of age" means any document issued by a governmental agency that contains a description or photograph of the person and gives the person's date of birth, including a passport, military identification card, or driver's license.

"Unfinished dextromethorphan" means DM in any form, compound, mixture, or preparation that is not a drug in finished dosage form.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect July 1, 2015.