

AN ACT

relating to the regulation of the sale of dextromethorphan to minors; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 6, Health and Safety Code, is amended by adding Chapter 488 to read as follows:

CHAPTER 488. OVER-THE-COUNTER SALES OF DEXTROMETHORPHAN

Sec. 488.001. DEFINITIONS. (a) In this chapter:

(1) "Dextromethorphan" means any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers.

(2) "Sale" includes a conveyance, exchange, barter, or trade.

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

Sec. 488.002. NONAPPLICABILITY. (a) 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, Occupations Code.

(b) This chapter does not require a business establishment to:

1 (1) keep specific records of transactions covered by
2 this chapter; or

3 (2) store dextromethorphan in a specific location in a
4 business establishment or otherwise restrict the availability of
5 dextromethorphan to customers.

6 Sec. 488.003. DISTRIBUTION TO MINORS PROHIBITED;
7 PREREQUISITE TO SALE. (a) A business establishment may not
8 dispense, distribute, or sell dextromethorphan to a customer under
9 18 years of age.

10 (b) Before dispensing, distributing, or selling
11 dextromethorphan over the counter, a business establishment must
12 require the customer obtaining the drug to display a driver's
13 license or other form of identification containing the customer's
14 photograph and indicating that the customer is 18 years of age or
15 older, unless from the customer's outward appearance the person
16 making the sale may reasonably presume the customer to be 27 years
17 of age or older.

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

21 (b) After receiving a warning for the first violation under
22 Subsection (a), a business establishment is liable to the state for
23 a civil penalty of:

24 (1) \$150 for the second violation; and

25 (2) \$250 for each subsequent violation.

26 (c) It is a defense in an action brought under this section
27 that the person to whom the dextromethorphan was dispensed,

1 distributed, or sold presented to the business establishment
2 apparently valid proof of identification.

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

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

14 Sec. 488.005. PROHIBITED LOCAL REGULATION. (a) A
15 political subdivision of this state may not adopt or enforce an
16 ordinance, order, rule, regulation, or policy that governs the
17 sale, distribution, or possession of dextromethorphan.

18 (b) An ordinance, order, rule, regulation, or policy
19 described by Subsection (a) is void and unenforceable.

20 SECTION 2. (a) Sections 488.003 and 488.004, Health and
21 Safety Code, as added by this Act, apply only to a transaction at a
22 business establishment that occurs on or after the effective date
23 of this Act.

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

27 SECTION 3. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 1518 was passed by the House on April 12, 2019, by the following vote: Yeas 138, Nays 5, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1518 was passed by the Senate on May 3, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor