

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4309

BY DELEGATES KESSINGER, WESTFALL, WHITE, COWLES

AND BATES

[Introduced January 26, 2018; Referred
to the Committee on Prevention and Treatment of
Substance Abuse then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §60A-12-1, §60A-12-2, §60A-12-3, §60A-12-4 and §60A-12-5, all relating to
 3 restricting the sale and trade of dextromethorphan; setting age limits; defining terms;
 4 establishing penalties; preempting local ordinances; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. RESTRICTIONS ON TRADE OF DEXTROMETHORPHAN.

§60A-12-1. Restrictions on trade of dextromethorphan.

1 (a) It is unlawful for
 2 (1) Any commercial entity to knowingly or willfully sell or trade a finished drug product
 3 containing any quantity of dextromethorphan to a person under 18 years of age; or
 4 (2) Any person who is under 18 years of age to purchase a finished drug product
 5 containing any quantity of dextromethorphan.

6 (b) Application. --
 7 (1) Nothing in this article shall be construed to impose any compliance requirement on a
 8 retail entity other than manually obtaining and verifying proof of age as a condition of sale,
 9 including placement of products in a specific place within a store, other restrictions on consumers'
 10 direct access to finished drug products, or the maintenance of transaction records.

11 (2) The provisions of this article shall not apply to a medication containing
 12 dextromethorphan that is sold pursuant to a valid prescription.

13 (c) Proof of age requirements. --
 14 A person making a retail sale of a finished drug product containing any quantity of
 15 dextromethorphan must require and obtain proof of age from the purchaser before completing the
 16 sale, unless from the purchaser's outward appearance the person making the sale would
 17 reasonably presume the purchaser to be 25 years of age or older.

§60A-12-2. Definitions.

1 For the purposes of this article:

2 The term “finished drug product” means a drug legally marketed under the Federal Food,
3 Drug, and Cosmetic Act, 21 U.S.C. §321 et seq., that is in finished dosage form; and

4 The term “proof of age” means any document issued by a governmental agency that
5 contains a description or photograph of the person and gives the person's date of birth, including
6 a passport, military identification card, or driver's license.

§60A-12-3. Rulemaking.

1 The state Board of Pharmacy shall promulgate legislative rules pursuant to §29A-3-1 et
2 seq. of this code to effectuate the purposes of this article in accordance with the provisions of
3 chapter twenty-nine-a of this code.

§60A-12-4. Criminal penalties; administrative violations.

1 (a) Any manufacturer, distributor, or retailer whose employee or representative, during the
2 course of the employee or representative's employment or association with that manufacturer,
3 distributor, or retailer sells or trades dextromethorphan in violation of §60A-12-1 of this code shall
4 receive a warning letter from the state Board of Pharmacy for the first violation.

5 (b) Any employee or representative of a manufacturer, distributor, or retailer who, during
6 the course of the employee's or representative's employment or association with that
7 manufacturer, distributor, or retailer sells or trades dextromethorphan in violation of §60A-12-1 of
8 this code shall be subject to a civil penalty in an amount:

9 (1) Not more than \$150 for the second such violation by a person;

10 (2) Not more than \$250 for the third such violation or a subsequent violation by a person.

11 (c) Any person who purchases dextromethorphan in violation of §60A-12-1 of this code is
12 guilty of a misdemeanor and, upon conviction shall be fined not less than \$100 nor more than
13 \$500.

§60A-12-5. Regulation of dextromethorphan preempted to state.

1 This article preempts any ordinance regulating the sale, distribution, receipt, or possession
2 of dextromethorphan enacted by a county, city, town, or other political subdivision of this state,

- 3 and dextromethorphan is not subject to further regulation by them.

NOTE: The purpose of this bill is to restrict the sale and trade of dextromethorphan. The bill sets age limits. The bill defines terms. The bill establishes penalties. The bill preempts local ordinances and requires rulemaking.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.