



State Control of Dextromethorphan (a.k.a. DXM): Summary

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The following statutes are related to state regulation of Dextromethorphan (“DXM”), a cough suppressing substance commonly found in over-the-counter cold medications and known to be prone to abuse in high doses. Please note that this document does not contain provisions related to state definitions or scheduling of DXM.

State	Statute(s)	Summary
Arizona	A.R.S. § 32-1978 (eff. 7.24.2014)	<p>It is unlawful:</p> <ol style="list-style-type: none"> (1) To sell or trade a finished drug product containing any quantity of DXM to a person under age 18; (2) For a person under age 18 to purchase a finished drug product containing any quantity of DXM; or (3) To possess, receive or distribute unfinished DXM unless the person is registered pursuant to the Federal Food, Drug, and Cosmetic Act or is licensed by the state Board of Pharmacy. <p>A person selling a finished product containing DXM must obtain proof of age from the buyer unless the seller can reasonably presume based on appearance that the purchaser is at least 25.</p> <p>The penalty for violating (1) above is a warning for the first offense and a \$50 civil fine for the second offense, unless the seller can document that an employee training program exists.</p> <p>The section does not apply to a medication containing DXM sold pursuant to a valid prescription.</p>

<u>State</u>	<u>Statute(s)</u>	<u>Summary</u>
California	Cal.Health & Safety Code §§ 11110-11 (eff. 1.1.2012)	<p>Section 11110 makes it an infraction for any person, corporation, or retail distributor, in an over-the-counter sale, to willfully and knowingly supply, deliver, or give possession of a substance containing DXM to a person under age 18 without a prescription. It is prima facie evidence of a violation if the seller does not obtain proof of the buyer's age unless the seller can reasonably presume based on appearance that the purchaser is at least age 25. A violation is punishable by a fine not exceeding \$250.</p> <p>Section 11111 requires a person, corporation, or retail distributor that sells a product containing DXM, if feasible, to use a cash register that is equipped with an age-verification feature that directs the retail clerk to request identification before the product may be purchased.</p>
Illinois	720 ILCS 570/218 (last amended 8.21.2007)	Establishes that possession of a drug product containing DXM in violation of the Illinois Controlled Substances Act (the "Act") is a Class 4 felony. Establishes that the sale, delivery, distribution, or possession with intent to sell, deliver, or distribute a drug product containing DXM in violation of the Act is a Class 2 felony.

<u>State</u>	<u>Statute(s)</u>	<u>Summary</u>
Kentucky	KRS §§ 218A.1447 to 218A. 1449 (eff. 6.24.2015)	<p>Makes it unlawful for:</p> <ul style="list-style-type: none"> (1) a person other than a medical facility, medical practitioner, pharmacist, pharmacy intern, pharmacy technician or pharmacy to possess more than one (1) gram of pure DXM or DXM extracted from solid or liquid dose forms; (2) a person to sell any product containing DXM to a person under age 18; (3) a person under age 18 to misrepresent his or her age, or direct someone else, for the purpose of buying a product containing DXM. <p>It is an affirmative defense to (2) above that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser could not have been ascertained by any other means</p> <p>Sellers must ask purchasers for proof of age if they have any reason to believe that the purchaser is under age 18.</p> <p>Any person who knowingly violates (1) above shall be subject to a fine of \$1,000 for the first violation and \$2,500 for each subsequent violation.</p> <p>Any person violating (2) and (3) above are subject to fines of \$25-100 for the first offense and \$100-250 for each subsequent violation.</p>

<u>State</u>	<u>Statute(s)</u>	<u>Summary</u>
Louisiana	LSA-R.S. § 40:962.1.2 (eff. 8.1.2014)	<p>It is unlawful:</p> <ul style="list-style-type: none"> (1) To sell a nonprescription substance containing any quantity of DXM to a person under age 18; or (2) For any person under age 18 to purchase or attempt to purchase a nonprescription substance containing any quantity of DXM. <p>The section does not apply to substances containing DXM dispensed pursuant to a valid prescription from a licensed practitioner with prescriptive authority.</p> <p>A nonprescription substance containing any quantity of DXM cannot be sold unless the purchaser submits proof of identification.</p> <p>The penalty for violating (1) above is a fine of not more than \$50 for the first offense, not more than \$100 for the second offense, and not more than \$150 for a third or subsequent violation. The penalty for violating (2) above is a fine of not more than \$50 for the first offense, and not more than \$200 for a second or subsequent violation.</p>
New York	General Business Law § 391-s (eff. 3.26.2014)	<p>No retail establishment may sell any product containing DXM as an active ingredient to a person under age 18 without a valid prescription. Retailers must request proof of age from buyers unless the purchaser reasonably appears to be at least age 25. Nevertheless, the appearance of the purchaser is not a valid defense for a retailer who violates the section.</p> <p>The penalty for violation is a fine of \$200 for each such violation.</p>
Rhode Island	Gen.Laws 1956, § 21-28.7-1 (eff. 11.9.2009)	<p>The section prohibits persons from possessing one gram or more of pure DXM. Medical facilities, medical practitioners, pharmacists and licensed pharmacies are exempted from the prohibition.</p> <p>Violations carry a civil penalty of \$1,000 for the first offense, and \$2,500 for the second and subsequent violations.</p>

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Tennessee	T.C.A., Title 39, Chapter 17, Part 4 (exact section not yet identified) (eff. 1.1.2016)	<p>Unlawful for:</p> <ul style="list-style-type: none"> (1) a commercial entity or its employee to knowingly sell a product containing DXM to a person under age 18 who is not an emancipated minor; or (2) a person under age 18 who is not an emancipated minor to purchase a product they know or should know contains DXM with the intent to use the product in a manner inconsistent with the recommended dosage and use. <p>The section does not apply to a product sold pursuant to a valid prescription.</p> <p>Prior to completing the sale, the buyer must present a valid government-issued ID proving that they are age 18 or older, unless from the buyer's outward appearance the seller would reasonably believe the purchaser to be at least 30 years old.</p> <p>A violation is punishable by a civil penalty of not more than \$100 for a first violation and \$500 for a second or subsequent violation.</p>

<u>State</u>	<u>Statute(s)</u>	<u>Summary</u>
Virginia	VA Code Ann. §§ 18.2-265.20 to 265.21 (eff. 1.1.2015)	<p>Section 18.2-265.20 makes it unlawful:</p> <ol style="list-style-type: none"> (1) For a pharmacy or retailer to knowingly or intentionally sell any product containing DXM to a minor; (2) For a pharmacy or retailer to sell or distribute a product containing DXM unless the purchaser presents proof of age, (unless the seller can reasonably presume from outward appearance that the purchaser is over age 25); or (3) For a minor to knowingly purchase a product containing DXM. <p>The section does not apply if the product was obtained pursuant to a valid prescription or order from a practitioner acting in the course of professional practice.</p> <p>Violations of (1) or (3) above are subject to a civil penalty of \$25 per violation. Violations of (2) above are subject to a notice for the first offense and a fine of \$25 for subsequent violations.</p> <p>Section 18.2-265.21 establishes that the distribution of (or possession with the intent to distribute) unfinished DXM by a person not registered under § 510 of the Federal Food, Drug and Cosmetic Act (the “Act”) is a Class 1 misdemeanor. The section does not apply to common carriers who receive unfinished DXM for distribution between one or more persons registered under the Act.</p>

<u>State</u>	<u>Statute(s)</u>	<u>Summary</u>
Washington	RCWA §§ 69.75.010-050 (eff. 7.1.2015)	<p>Section 69.75.010 contains definitions.</p> <p>Section 69.75.020 provides that it is unlawful:</p> <ul style="list-style-type: none"> (1) For a commercial entity to knowingly or willfully sell a finished drug product containing any quantity of DXM to a person under age 18; or (2) For a person under age 18 to purchase a finished drug product containing any quantity of DXM. <p>The section does not apply if a purchaser under age 18 supplies proof of active enrollment in the military or proof of emancipation.</p> <p>Sellers of a finished drug product containing any quantity of DXM must obtain proof of age from the buyer, unless the seller can reasonably presume from outward appearance that the purchaser is at least age 25.</p> <p>For both a retailer and its employee, the first violation of (1) above results in a written warning. A subsequent violation of (1) results in a class 1 civil infraction for the employee, and a similar infraction for the retailer, unless the retailer demonstrates a good faith effort to comply. A person violating (2) above receives a written warning for the first offense and is guilty of a class 1 civil infraction for subsequent violations.</p> <p>Section 69.75.030 requires the trade association of DXM manufacturers to supply the state's Pharmacy Quality Assurance Commission with a list of products containing DXM marketed by its members. This list shall be updated annually.</p> <p>Section 69.75.040 provides that the statute does not impose any other compliance requirement on a retailer other than manually obtaining and verifying age. In addition, it provides that the law does not apply to medication containing DXM sold pursuant to a valid prescription.</p> <p>Section 69.75.050 provides that the law preempts any county, city, or town ordinance about the sale, distribution or possession of products containing DXM.</p>