



State Control of Dextromethorphan (a.k.a. DXM): Statutory Text

Note that this document does not contain provisions related to state definitions or scheduling of DXM.

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Arizona

Arizona Revised Statutes

Title 32. Professions and Occupations

Chapter 18. Pharmacy

Article 3. Regulation

§ 32-1978. Sale of dextromethorphan; age requirement; exception; violation; civil penalty; definitions (eff. 7.24.2014).

A. It is prohibited for:

1. Any commercial entity to knowingly or wilfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person who is under eighteen years of age.
2. Any person who is under eighteen years of age to purchase a finished drug product containing any quantity of dextromethorphan.
3. Any person to possess, receive or distribute unfinished dextromethorphan, unless the person is registered pursuant to the federal food, drug, and cosmetic act or is appropriately licensed with the board.

B. A person making a retail sale of a finished drug product containing any quantity of dextromethorphan must require and obtain proof of age from the purchaser before completing the sale, unless the person making the sale reasonably presumes the purchaser to be at least twenty-five years of age based on the purchaser's outward appearance.

C. Subsection A of this section does not apply to common carriers that possess, receive or distribute unfinished dextromethorphan for purposes of distributing such unfinished dextromethorphan between persons that are registered under section 510 of the federal food, drug, and cosmetic act or that are appropriately licensed with the board.

D. This section does not impose any compliance requirement on a 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 a consumer's direct access to finished drug products or the maintenance of transaction records.

E. A person who sells or trades a finished drug product containing any quantity of dextromethorphan to a person who is under eighteen years of age shall receive a warning for a first offense and shall pay a civil penalty of fifty dollars for a second offense, unless the person provides documentation that there is an employee training program in place.

F. This section does not apply to a medication containing dextromethorphan that is sold pursuant to a valid prescription.

(cont'd)

G. For the purposes of this section:

1. "Common carrier" means any person that holds itself out to the general public as a provider for hire of the transportation of merchandise, whether or not the person actually operates the vehicle by which the transportation is provided within, to or from the United States.
2. "Finished drug product" means a drug that is legally marketed under the federal food, drug, and cosmetic act and that is in finished dosage form.
3. "Unfinished dextromethorphan" means dextromethorphan in any form, compound, mixture or preparation that is not a finished drug product.

California

California Health and Safety Code Division 10. Uniform Controlled Substances Act Chapter 3. Regulation and Control Article 1. Reporting

§ 11110. Supplying drugs containing dextromethorphan to minors; fines; prima facie evidence of violation; proof (eff. 1.1.2012).

(a) It shall be an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250), for any person, corporation, or retail distributor to willfully and knowingly supply, deliver, or give possession of a drug, material, compound, mixture, preparation, or substance containing any quantity of dextromethorphan (the dextrorotatory isomer of 3-methoxy-Nmethylmorphinan, including its salts, but not including its racemic or levorotatory forms) to a person under 18 years of age in an over-the-counter sale without a prescription.

(b) It shall be prima facie evidence of a violation of this section if the person, corporation, or retail distributor making the sale does not require and obtain bona fide evidence of majority and identity from the purchaser, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be 25 years of age or older.

(c) Proof that a person, corporation, or retail distributor, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this section. As used in this section, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the Armed Forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(d)(1) Notwithstanding any other provision of this section, a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction pursuant to subdivision (a) or subject to any civil penalties.

(2) This subdivision shall not apply to a retail clerk who is a willful participant in an ongoing criminal conspiracy to violate this section.

California

California Health and Safety Code
Division 10. Uniform Controlled Substances Act
Chapter 3. Regulation and Control
Article 1. Reporting

§ 11111. Sale of products containing dextromethorphan without prescription; use of cash register equipped with age-verification feature to monitor age-restricted items (eff. 1.1.2012).

A person, corporation, or retail distributor that sells or makes available products containing dextromethorphan, as defined in subdivision (a) of Section 11110, in an over-the-counter sale without a prescription shall, if feasible, use a cash register that is equipped with an age-verification feature to monitor age-restricted items. The cash register shall be programmed to direct the retail clerk making the sale to request bona fide evidence of majority and identity, as described in subdivision (c) of Section 11110, before a product containing dextromethorphan may be purchased.

Illinois

Illinois Compiled Statutes

Chapter 720. Criminal Offenses

Act 570. Illinois Controlled Substances Act

Article II. Schedules of Controlled Substances

§ 218. Dextromethorphan (eff. 8.21.2007).

(a) (Blank).

(b) Possession of a drug product containing dextromethorphan in violation of this Act is a Class 4 felony. The sale, delivery, distribution, or possession with intent to sell, deliver, or distribute a drug product containing dextromethorphan in violation of this Act is a Class 2 felony.

(c) (Blank).

Louisiana

Louisiana Revised Statutes

Title 40. Public Health and Safety

Chapter 4. Food and Drugs

Part X. Uniform Controlled Dangerous Substances Law

§ 40:962.1.2. Restriction on the sale and purchase of nonprescription products containing dextromethorphan, its salts or optical isomers, and salts of optical isomers (eff. 8.1.2014).

A. (1) It shall be unlawful to sell a nonprescription material, compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts or optical isomers, or salts of optical isomers to any person under the age of eighteen.

(2) It shall be unlawful for any person under the age of eighteen to purchase or attempt to purchase a nonprescription material, compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts or optical isomers, or salts of optical isomers.

B. (1) A nonprescription material, compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts or optical isomers, or salts of optical isomers shall not be sold unless the purchaser submits a valid, current form of photo identification issued by the state of Louisiana, another state, or the government of the United States, including but not limited to a driver's license, military identification card, state identification card, or passport.

(2) Each form of identification shall on its face establish the age of the person as eighteen years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional information which contains the name, date of birth, and photograph of the person.

C. The provisions of this Section shall not apply to a compound, mixture, or preparation containing any detectable quantity of dextromethorphan which is dispensed pursuant to a valid prescription from a licensed practitioner with prescriptive authority.

D. (1) A person who violates the provisions of this Section by selling a nonprescription compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts or optical isomers, or salts of optical isomers shall be fined not more than fifty dollars for the first violation. The penalties for subsequent violations shall include a fine of not more than one hundred dollars for the second violation and a fine of not more than one hundred fifty dollars for the third and any subsequent violation.

(cont'd)

(2) A person who violates the provisions of this Section by purchasing or attempting to purchase a nonprescription compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts or optical isomers, or salts of optical isomers shall be fined not more than fifty dollars for a first violation and not more than two hundred dollars for a second or subsequent violation.

E. The legislature hereby recognizes the need for uniformity in the sales of nonprescription compounds, mixtures, or preparations containing any detectable quantity of dextromethorphan, its salts or optical isomers, and salts of optical isomers. Therefore, the provisions of this Section shall supersede and preempt any rule, regulation, code, statute, or ordinance of any political subdivision or other unit of local government that attempts to regulate the sale or purchase of nonprescription compounds, mixtures, or preparations containing any detectable quantity of dextromethorphan, its salts or optical isomers, and salts of optical isomers.

New York

Consolidated Laws of New York

General Business Law

Chapter 20. Of the Consolidated Laws

Article 26. Miscellaneous

§ 391-s. Restricted access to retail sale of dextromethorphan, commonly known as “dxm” (eff. 3.26.2014).

1. No retail establishment offering for sale any product or products containing as an active ingredient dextromethorphan, shall permit the sale of such products to persons under the age of eighteen without a valid prescription. Retail establishments shall require proof of legal age for purchase of such products. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of any product or products containing as an active ingredient dextromethorphan to an individual under eighteen years of age. Any retail establishment which violates the provisions of this section shall be subject to a fine of two hundred fifty dollars for each such violation.
2. As used in this section “retail establishment” means every vendor that in the regular course of business sells products containing dextromethorphan at retail directly to the public including, but not limited to, pharmacies, grocery stores, and other retail stores.
3. This section shall supersede any local laws or ordinances regulating the sales of products containing dextromethorphan.

Rhode Island

General Laws of Rhode Island

Title 21. Food and Drugs

Chapter 28.7. Possession and Trafficking in Dextromethorphan

§ 21-28.7-1. Possession of dextromethorphan (eff. 11.9.2009).

(a) No person may possess one gram or more of pure dextromethorphan or dextromethorphan as defined in accordance with U.S. pharmacopeia reference standards extracted from solid or liquid dose forms, other than a medical facility, medical practitioner, pharmacist or pharmacy licensed pursuant to title 5 of the general laws, and registrants under § 510 of the Federal Food, Drug, and Cosmetic Act pursuant to 21 USC § 321 et seq.

(b) A violation of this section shall carry a civil penalty of one thousand dollars (\$1,000) for the first offense, and two thousand five hundred dollars (\$2,500) for the second and subsequent offenses.

Virginia

Code of Virginia

Title 18.2. Crimes and Offenses Generally

Chapter 7. Crimes Involving Health and Safety

Article 1.3. Dextromethorphan Distribution Act

§ 18.2-265.20. Sale or distribution of dextromethorphan to minors; purchase by minors; civil penalty (eff. 1.1.2015).

A. It is unlawful for any pharmacy or retail distributor knowingly or intentionally to sell or distribute any product containing dextromethorphan to a minor.

B. A pharmacy or retail distributor, or its employee or agent, shall not sell or distribute a product containing dextromethorphan unless the purchaser presents a federal, state, or local government-issued document that contains a photograph and the birth date of the purchaser that shows that the purchaser is at least 18 years of age or unless from the purchaser's outward appearance the pharmacy or retail distributor would reasonably presume the purchaser to be 25 years of age or older.

C. It is unlawful for any minor knowingly or intentionally to purchase any product containing dextromethorphan.

D. Any pharmacy or retail distributor, or its employee or agent, that violates subsection A or any minor who violates subsection C is subject to a civil penalty of \$25. Any pharmacy or retail distributor, or its employee or agent, that violates subsection B shall receive a notice of noncompliance and, upon any subsequent violation of subsection B, shall be subject to a civil penalty of \$25. Such penalty shall be collected by the attorney for the Commonwealth for the locality where the violation occurred, and the proceeds shall be deposited into the Literary Fund.

E. The provisions of this section shall not apply if the product was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Virginia

Code of Virginia

Title 18.2. Crimes and Offenses Generally

Chapter 7. Crimes Involving Health and Safety

Article 1.3. Dextromethorphan Distribution Act

§ 18.2-265.21. Possession or distribution of unfinished dextromethorphan; penalty (eff. 1.1.2015).

Any person who distributes or possesses with the intent to distribute unfinished dextromethorphan who is not registered under § 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) or otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.) to distribute or possess unfinished dextromethorphan is guilty of a Class 1 misdemeanor. This section does not apply to a common carrier that receives or possesses unfinished dextromethorphan for the purpose of distributing such unfinished dextromethorphan between persons registered under § 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) or otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.) to distribute or possess unfinished dextromethorphan.

Washington

Revised Code of Washington

Title 69. Food, Drugs, Cosmetics, and Poisons

Chapter 69.75. Dextromethorphan

§ 69.75.010. Definitions (eff. 7.1.2015).

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “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.

(2) “Finished drug product” means a drug legally marketed under the federal food, drug, and cosmetic act, 21 U.S.C. 321 et seq. that is in finished dosage form.

(3) “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.

(4) “Unfinished dextromethorphan” means dextromethorphan in any form, compound, mixture, or preparation that is not a drug in finished dosage form.

Washington

Revised Code of Washington

Title 69. Food, Drugs, Cosmetics, and Poisons

Chapter 69.75. Dextromethorphan

§ 69.75.020. Retail sales--Proof of age from purchaser--Unlawful acts, exceptions--Penalties (eff. 7.1.2015)

(1) A person making a retail sale of a finished drug product containing any quantity of dextromethorphan must require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be twenty-five years of age or older.

(2) It is unlawful for any:

- (a) Commercial entity to knowingly or willfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person less than eighteen years of age; or
- (b) Person who is less than eighteen years of age to purchase a finished drug product containing any quantity of dextromethorphan.

(3) Subsection (2)(a) and (b) of this section do [does] not apply if an individual under eighteen years of age:

- (a) Supplies proof at the time of sale that such individual is actively enrolled in the military and presents a valid military identification card; or
- (b) Supplies proof of emancipation.

(4)(a) Any manufacturer, distributor, or retailer whose employee or representative, during the course of the employee's or representative's employment or association with that manufacturer, distributor, or retailer sells or trades dextromethorphan in violation of subsection (2)(a) of this section must be given a written warning by a law enforcement agency for the first offense. For any subsequent offense, the manufacturer, distributor, or retailer is guilty of a class 1 civil infraction as provided in RCW 7.80.120, except for any manufacturer, distributor, or retailer who demonstrates a good faith effort to comply with the requirements of this chapter.

(b) Any employee or representative of a manufacturer, distributor, or retailer who, during the course of the employee's or representative's employment or association with that manufacturer, distributor, or retailer sells or trades dextromethorphan in violation of subsection (2)(a) of this section must be given a written warning by a law enforcement agency for the first offense. For any subsequent offense, the employee or representative is guilty of a class 1 civil infraction as provided in RCW 7.80.120.

(c) Any person who purchases dextromethorphan in violation of subsection (2)(b) of this section must be given a written warning by a law enforcement agency for the first offense. For any subsequent offense, the person is guilty of a class 1 civil infraction as provided in RCW 7.80.120.

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Washington

Revised Code of Washington

Title 69. Food, Drugs, Cosmetics, and Poisons

Chapter 69.75. Dextromethorphan

§ 69.75.030. List of products containing dextromethorphan, trade association representing manufacturers to supply (eff. 7.1.2015).

The trade association representing manufacturers of dextromethorphan shall supply to the pharmacy quality assurance commission and requesting licensed retailers an initial list of products containing dextromethorphan that its members market. This list shall be updated on an annual basis. The trade association representing manufacturers of dextromethorphan shall make other reasonable efforts to communicate the requirements of chapter 64, Laws of 2014.

§ 69.75.040. Construction of chapter (eff. 7.1.2015)

(1) Nothing in this chapter is construed to impose any compliance requirement on a 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.

(2) The provisions of this chapter do not apply to medication containing dextromethorphan that is sold pursuant to a valid prescription.

§ 69.75.050. Preemption (eff. 7.1.2015)

This chapter preempts any ordinance regulating the sale, distribution, receipt, or possession of dextromethorphan enacted by a county, city, town, or other political subdivision of this state, and dextromethorphan is not subject to further regulation by such subdivisions.