Regular Session, 2013

HOUSE BILL NO. 82

BY REPRESENTATIVE HILL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DRUGS: Limits the sale and purchase of products containing dextromethorphan

AN ACT

To enact R.S. 40:962.1.3 and 962.1.4, relative to nonprescription compounds, mixtures, or preparations containing dextromethorphan; to prohibit the sale of such nonprescription compounds, mixtures, and preparations to persons under the age of eighteen; to provide for the production of a photo identification prior to such purchase; to provide limitations on the quantities of products containing dextromethorphan which may be sold within a specified period of time; to create the crime of unlawful possession of dextromethorphan; to provide for penalties; to provide for exceptions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:962.1.3 and 962.1.4 are hereby enacted to read as follows:

<u>§962.1.3. Restriction on the sale of nonprescription products containing dextromethorphan, its salts, optical isomers, and salts of optical isomers</u>

<u>A.(1) A nonprescription material, compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts, optical isomers, or salts of optical isomers shall not be dispensed, sold, or distributed to any person eighteen years of age or older unless the purchaser produces a federal- or state-issued photo identification or a document that, with respect to identification, is considered acceptable for purposes of Sections 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B) of Title 8 of the Code of Federal Regulations.</u>

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(2) A person shall not sell, dispense, or distribute to a person eighteen years of age or older nonprescription products containing dextromethorphan in a quantity greater than three grams of dextromethorphan to the same purchaser within any thirty-day period.

B. A nonprescription material, compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts, optical isomers, or salts of optical isomers shall not be dispensed, sold, or distributed to any person who has not attained the age of eighteen years.

C. No person shall purchase, receive, or otherwise acquire more than three grams of any product, mixture, or preparation described in Subsection A of this Section within any thirty-day period.

D.(1) Whoever violates the provisions of this Section by selling, dispensing, or distributing nonprescription products containing dextromethorphan to a person under eighteen years of age shall be fined not more than two thousand dollars, imprisoned, with or without hard labor, for not more than two years, or both.

(2) Whoever violates the provisions of this Section by selling, dispensing, or distributing more than three grams of nonprescription products containing dextromethorphan within a thirty-day period shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.

E. The provisions of this Section shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription from a licensed practitioner with prescriptive authority.

§962.1.4. Unlawful possession of three grams or more of dextromethorphan, its salts, optical isomers, and salts of optical isomers

A.(1) It is unlawful for any person to possess three grams or more of dextromethorphan, its salts, optical isomers, or salts of optical isomers.

(2) It is unlawful for any person to possess dextromethorphan, its salts, optical isomers, or salts of optical isomers in powder form unless the weight of the dextromethorphan, its salts, optical isomers, or salts of optical isomers is less than

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three grams and the powder is in the manufacturer's original packaging and may be lawfully sold over the counter without a prescription pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.

B. The provisions of this Section shall not apply to any of the following:

(1) Any person possessing a valid prescription for dextromethorphan, its salts, optical isomers, and salts of optical isomers.

(2) Any licensed manufacturer, wholesaler, or distributor who sells, transfers, or otherwise furnishes dextromethorphan, its salts, optical isomers, and salts of optical isomers to any licensed practitioner operating within the course and scope of that profession.

(3) Any licensed pharmacist or other authorized person who sells, dispenses, or distributes dextromethorphan, its salts, optical isomers, and salts of optical isomers in the course of his professional practice, pursuant to the prescription of any licensed practitioner.

(4) Any licensed practitioner who administers dextromethorphan, its salts, optical isomers, and salts of optical isomers in the course of their professional practice.

(5) Any person in possession of dextromethorphan, its salts, optical isomers, and salts of optical isomers in his residence under circumstances that are consistent with typical medicinal or household use. Factors that the court may consider in determining whether the circumstances of the possession are consistent with typical medicinal or household use include but are not limited to storage location, purchase date, expiration date, possession of the products in a variety of strengths, brands, types, or purposes and the health conditions of persons in the residence.

(6) Any manufacturer, wholesaler, distributor, or retail business which sells, transfers, or otherwise furnishes products to customers for medicinal purposes, which products contain dextromethorphan, its salts, optical isomers, and salts of optical isomers, while acting within the scope and course of that business.

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C. Whoever violates any provision of this Section shall be fined not more than two thousand dollars, imprisoned, with or without hard labor, for not more than two years, or both.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Hill HB No. 82

Abstract: Prohibits the sale of dextromethorphan products to minors, limits the amount of the product which can be sold to adults, and provides penalties for unlawful possession.

Proposed law provides that a nonprescription material, compound, mixture, or preparation containing any detectable quantity of dextromethorphan, its salts, optical isomers, or salts of optical isomers shall not be dispensed, sold, or distributed to any person unless they are 18 years of age or older and produce photo identification.

Proposed law limits the quantity of nonprescription dextromethorphan which may be sold to three grams within a 30-day period to the same customer.

Proposed law creates an exception for any dextromethorphan products which are dispensed pursuant to a valid prescription.

Proposed law provides penalties for the sale of nonprescription products containing dextromethorphan to persons under 18 years of age which include a fine of not more than $2,000, imprisonment, with or without hard labor, for not more than two years, or both.

Proposed law provides penalties for selling more than three grams of nonprescription products containing dextromethorphan within a 30-day period which include a fine of not more than $500, imprisonment for not more than six months, or both.

Proposed law provides that it is unlawful for any person to possess three grams or more of dextromethorphan, its salts, optical isomers, or salts of optical isomers.

Proposed law contains exceptions for amounts of dextromethorphan possessed pursuant to a valid prescription and also provides exemptions for various health care professionals and pharmaceutical distributors and manufacturers. Further provides penalties including a fine of not more than $2,000, imprisonment for not more than two years, or both.

(Adds R.S. 40:962.1.3 and 962.1.4)

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