

AMENDED IN ASSEMBLY MARCH 31, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1853**

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**Introduced by Assembly Member Simitian**

January 29, 2004

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An act to add Section 11110 to the Health and Safety Code, relating to nonprescription drugs.

LEGISLATIVE COUNSEL'S DIGEST

AB 1853, as amended, Simitian. ~~Dimenhydrinate:~~  
~~dextromethorphan~~ *Dextromethorphan*: sale to minors prohibited.

Existing law regulates the sale of nonprescription drugs, as specified.

This bill would, in addition, make it an infraction for any person in an over-the-counter sale to, without a prescription, willfully *and knowingly* deliver to a person under 18 years of age a nonprescription drug containing ~~dimenhydrinate or~~ dextromethorphan. *The bill would further provide that a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction, subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer, unless the retail clerk is a willful participant in an ongoing criminal conspiracy to violate the provisions prohibiting the sale of dextromethorphan to minors.* By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11110 is added to the Health and Safety  
2 Code, to read:

3 11110. (a) It shall be an infraction for any person in an  
4 over-the-counter sale to, without a prescription, willfully *and*  
5 *knowingly* deliver to a person under the age of 18 years a drug,  
6 material, compound, mixture, preparation, or substance  
7 containing any quantity of ~~the following:~~

8 ~~(1) Dimenhydrinate.~~

9 ~~(2) Dextromethorphan~~ *dextromethorphan* (the dextrorotatory  
10 isomer of 3-methoxy-N-methylmorphinan, including its salts, but  
11 not including its racemic or levorotatory forms).

12 (b) (1) It shall be prima facie evidence of a violation of this  
13 section if the person making the sale does not require and obtain  
14 proof of age from the purchaser, unless from the purchaser’s  
15 outward appearance the person making the sale would reasonably  
16 presume the purchaser to be 25 years of age or older.

17 (2) For the purposes of this section, “proof of age” means any  
18 document issued by a governmental agency that contains a  
19 description or photograph of the person and gives the person’s date  
20 of birth, including a passport, military identification card, or  
21 driver’s license.

22 (c) It shall be an affirmative defense to a violation of this  
23 section if the defendant proves, by a preponderance of the  
24 evidence, all of the following:

25 (1) The person making the sale required and obtained proof of  
26 age from the purchaser.

27 (2) The purchaser falsely represented his or her age by the use  
28 of a false, forged, or altered document.

29 (3) The appearance of the purchaser would lead an ordinary  
30 and prudent person to believe that the purchaser was at least 18  
31 years of age.

32 (4) The sale was made in good faith and in reliance upon the  
33 appearance and representation of proof of age of the purchaser.



1     (d) (1) *Notwithstanding any other provision of this section, a*  
2 *retail clerk who fails to require and obtain proof of age from the*  
3 *purchaser shall not be guilty of an infraction pursuant to*  
4 *subdivision (a), subject to any civil penalties, or subject to any*  
5 *disciplinary action or discharge by his or her employer.*

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

9     SEC. 2. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

