

Senate Bill No. 514

CHAPTER 199

An act to add Sections 11110 and 11111 to the Health and Safety Code, relating to nonprescription drugs.

[Approved by Governor August 31, 2011. Filed with
Secretary of State August 31, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 514, Simitian. Dextromethorphan: sale to minors prohibited.

Existing law prohibits a manufacturer, wholesaler, retailer, or other person from selling, transferring, or otherwise furnishing a specified substance, including ephedrine and pseudoephedrine, to a person under 18 years of age, except as specified. A first violation of this provision is a misdemeanor. Existing law further regulates the sale of nonprescription drugs, as specified.

This bill would, in addition, make it an infraction, punishable by a fine not exceeding \$250, for any person, corporation, or retail distributor, in an over-the-counter sale to, without a prescription, to willfully and knowingly supply, deliver, or give possession of a nonprescription drug containing dextromethorphan to a person under 18 years of age. The bill would provide that proof that bona fide evidence of majority and identity was demanded and shown shall be a defense to any criminal prosecution.

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 or subject to any civil penalties, 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 bill would require a person, corporation, or retail distributor that sells a product containing dextromethorphan 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, as provided.

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.

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

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

11110. (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-N-methylmorphinan, 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.

SEC. 2. Section 11111 is added to the Health and Safety Code, to read:

11111. 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.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

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