

Senate Bill 92

By: Senators Robertson of the 29th, Anderson of the 24th, Albers of the 56th, Mullis of the 53rd and Payne of the 54th

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia
2 Annotated, relating to schedules, offenses, and penalties regarding the regulation of
3 controlled substances, so as to prohibit the sale to and by minors of drug products containing
4 dextromethorphan; to provide for definitions; to provide for proper identification; to provide
5 for a list of finished drug products; to provide for penalties; to provide for statutory
6 construction; to provide for state regulation; to provide for limited liability; to provide for
7 related matters; to provide an effective date and applicability; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
12 relating to schedules, offenses, and penalties regarding the regulation of controlled
13 substances, is amended by adding a new Code section to read as follows:

14 "16-13-30.7.

15 (a) As used in this Code section, the term:

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16 (1) 'Finished drug product' means a drug legally marketed under the Federal Food, Drug,
17 and Cosmetic Act that is in finished dosage form.

18 (2) 'Minor' means any individual under the age of 18 years.

19 (3) 'Person' means any natural person or any firm, partnership, company, corporation, or
20 other entity.

21 (4) 'Proper identification' means any document issued by a governmental agency
22 containing a description of the person, such person's photograph, or both, and giving such
23 person's date of birth and includes, without being limited to, a passport, military
24 identification card, driver's license, or identification card authorized under Code Sections
25 40-5-100 through 40-5-104. Proper identification shall not include a birth certificate.

26 (b)(1) It shall be unlawful for any person to knowingly or willfully sell or trade a
27 finished drug product containing any quantity of dextromethorphan to a minor.

28 (2) It shall be unlawful for any minor to purchase a finished drug product containing any
29 quantity of dextromethorphan.

30 (c) A person making a retail sale of a finished drug product containing any quantity of
31 dextromethorphan shall require and obtain proper identification from the purchaser before
32 completing the sale; provided, however, that a person that provides online sales of such
33 drug products for home delivery may accept a purchaser's declaration that he or she is an
34 adult when such purchaser registers for the online sale and home delivery with the person
35 making the sale, and such declaration shall satisfy the requirements of this subsection
36 regarding requiring and obtaining proper identification.

37 (d) Any trade association representing manufacturers of over-the-counter finished drug
38 products containing dextromethorphan shall provide to any requesting retail business a list
39 of the finished drug products containing dextromethorphan marketed by the trade
40 association's members. A retail business may make a request to a trade association
41 pursuant to this subsection only once per year.

42 (e)(1) Any person that violates paragraph (1) of subsection (b) of this Code section shall,
43 upon conviction, be guilty of a misdemeanor; provided, however, that a warning letter
44 from local law enforcement shall be issued for a first violation.

45 (2) Any person that violates paragraph (2) of subsection (b) of this Code section shall,
46 upon conviction, be guilty of a misdemeanor; provided, however, that a warning letter
47 from local law enforcement shall be issued for a first violation.

48 (3) The penalties contained in this subsection shall be the exclusive penalties in
49 connection with a violation of this Code section, and a violation or violations shall not
50 result in a licensing action against a person by any state, county, or municipal licensing
51 board, department, or agency.

52 (f) With respect to any sale made by an employee of a retail business, the owner of the
53 retail business shall be deemed to be in compliance with the provisions of paragraph (1)
54 of subsection (b) of this Code section if the owner:

55 (1) Had no actual knowledge of the sale; and

56 (2) Establishes and carries out an annual program of training for employees which is
57 reasonably designed to prevent violations of paragraph (1) of subsection (b) of this Code
58 section.

59 (g) This Code section shall not be construed to:

60 (1) Impose any restriction on the placement of products in a specific place within a retail
61 store or on consumers' direct access to finished drug products;

62 (2) Impose any requirement on the maintenance of transaction or verification records by
63 any person in connection with the sale of dextromethorphan; or

64 (3) Apply to a medication containing dextromethorphan that is sold pursuant to a valid
65 prescription.

66 (h) The authority to regulate dextromethorphan is reserved to the state, and, except as
67 specifically provided by statute, no county, municipality, or consolidated government may
68 enact or enforce an ordinance regulating the possession or sale of dextromethorphan.

69 (i) No person shall have a cause of action for any loss or damage caused by an act or
70 omission by a person pursuant to subsection (c) of this Code section."

71 **SECTION 2.**

72 This Act shall become effective on July 1, 2021, and shall apply to offenses committed on
73 or after that date.

74 **SECTION 3.**

75 All laws and parts of laws in conflict with this Act are repealed.