

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

319T0613

HOUSE JUDICIARY ENGROSSED NO. **HB 1193** 2/10/2012

Introduced by: Representatives Hunt, Abdallah, Hagggar, Hansen (Jon), and Van Gerpen and
Senators Schlekeway, Cutler, Kraus, and Rhoden

1 FOR AN ACT ENTITLED, An Act to regulate the sale of dextromethorphan and to provide a
2 penalty thereto.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
5 as follows:

6 For purposes of this Act, dextromethorphan is the dextrorotatory isomer of 3-methoxy-N-
7 methylmorphinan, including its salts, but not including its racemic or levorotatory forms.

8 Section 2. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
9 as follows:

10 No person, corporation, or retail distributor may willfully and knowingly supply, deliver,
11 or give possession of a drug, material, compound, mixture, preparation, or substance containing
12 any quantity of dextromethorphan to a person under eighteen years of age in an over-the-counter
13 sale without a prescription. A violation of this section is punishable by a civil fine not exceeding
14 two hundred fifty dollars to be deposited in the state general fund.



1 The fine imposed pursuant to section 2 of this Act may not be imposed on a retail clerk who
2 fails to require and obtain proof of age from the purchaser unless the retail clerk is a willful
3 participant in an ongoing criminal conspiracy to violate the provisions of this Act prohibiting
4 the sale of dextromethophan to minors.

5 Section 3. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
6 as follows:

7 It is an affirmative defense to any civil prosecution under section 2 of this Act that a person,
8 corporation, or retail distributor, or his or her agent or employee, demanded, was shown, and
9 acted in reasonable reliance upon bona fide evidence of majority and identity.

10 Section 4. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
11 as follows:

12 For purposes of this Act, bona fide evidence of majority and identity is a document issued
13 by a federal, state, county, or municipal government, or subdivision or agency thereof, that bears
14 the name, date of birth, description, and picture of the person.

15 Section 5. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
16 as follows:

17 No employee or retailer is civilly liable to any injured person or the person's estate for any
18 injury suffered, including any wrongful death, or property damage suffered due to the sale of
19 any dextromethorphan product in violation of § 34-20D-1.

20 Section 6. That chapter 34-20D be amended by adding thereto a NEW SECTION to read
21 as follows:

22 No county or municipality may establish requirements or establish a penalty that is higher
23 or more stringent than the requirements or penalties established by this chapter.