

110TH CONGRESS
1ST SESSION

S. 2274

To amend the Controlled Substances Act to prevent the abuse of dextromethorphan, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2007

Mr. BIDEN (for himself, Mr. GRASSLEY, Mr. DURBIN, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Controlled Substances Act to prevent the abuse of dextromethorphan, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dextromethorphan
5 Abuse Reduction Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) When used properly, cough medicines that
9 contain dextromethorphan have a long history of
10 being safe and effective. But abuse of dextromethor-

1 phan at high doses can produce hallucinations, rapid
2 heart beat, high blood pressure, loss of conscious-
3 ness, and seizures. The dangers multiply when dex-
4 tromethorphan is abused with alcohol, prescription
5 drugs, or narcotics.

6 (2) Dextromethorphan is inexpensive, legal, and
7 readily accessible, which has contributed to the in-
8 creased abuse of that drug, particularly among teen-
9 agers.

10 (3) Increasing numbers of teens and others are
11 abusing dextromethorphan by ingesting it in exces-
12 sive quantities. Prolonged use at high doses can lead
13 to psychological dependence on the drug. Abuse of
14 dextromethorphan can also cause impaired judg-
15 ment, which can lead to injury or death.

16 (4) Dextromethorphan abuse increased by a
17 factor of 10 during the period of 1999 through
18 2004, with an increase by a factor of 15 among chil-
19 dren aged 9 to 17 years.

20 (5) An estimated 2,400,000 teenagers (1 in 10)
21 abused over-the-counter cough medicines in 2005.
22 Children ages 9 to 17 years are the fastest growing
23 group of dextromethorphan abusers.

24 (6) The Food and Drug Administration has
25 called the abuse of dextromethorphan a “serious

1 issue” and a “disturbing new trend” that can cause
2 “death as well as other serious adverse events such
3 as brain damage, seizure, loss of consciousness, and
4 irregular heartbeat.”.

5 (7) In recognition of the problem, several retail-
6 ers have voluntarily implemented age restrictions on
7 purchases of cough and cold medicines containing
8 dextromethorphan.

9 (8) Prevention is a key component of address-
10 ing the rise in the abuse of legal medications. Edu-
11 cation campaigns teaching teens and parents about
12 the dangers of these drugs are an important part of
13 this effort.

14 **SEC. 3. DEXTROMETHORPHAN.**

15 (a) DEFINITIONS.—Section 102 of the Controlled
16 Substances Act (21 U.S.C. 802) is amended by adding at
17 the end the following:

18 “(50) The term ‘finished dosage form’, relating to
19 dextromethorphan, means dextromethorphan that—

20 “(A) is—

21 “(i) in a tablet, capsule, solution, liquid, or
22 other form intended for retail sale, and that
23 generally contains inactive ingredients; and

24 “(ii) approved under the Federal Food,
25 Drug, and Cosmetic Act (21 U.S.C. 301 et

1 seq.) as a nonprescription drug (as that term is
2 defined in section 760 of that Act (21 U.S.C.
3 379aa)); or

4 “(B) has been combined with other active or in-
5 active ingredients during the process of manufac-
6 turing a tablet, capsule, solution, liquid, or other
7 form described in subparagraph (A).

8 “(51) The term ‘unfinished’, relating to dextrome-
9 thorphan, means any concentration or amount of dextro-
10 methorphan that is not in finished dosage form.”.

11 (b) UNFINISHED DEXTROMETHORPHAN.—Schedule
12 V of section 202(c) of the Controlled Substances Act (21
13 U.S.C. 812(c)) is amended by adding at the end the fol-
14 lowing:

15 “(6) Unfinished dextromethorphan.”.

16 (c) SALES OF DEXTROMETHORPHAN IN FINISHED
17 DOSAGE FORM.—

18 (1) IN GENERAL.—Part D of title II of the
19 Controlled Substances Act (21 U.S.C. 841 et seq.)
20 is amended by adding at the end the following:

21 **“SEC. 424. CIVIL PENALTIES FOR CERTAIN DEXTROME-**
22 **THORPHAN SALES.**

23 “(a) IN GENERAL.—

24 “(1) SALE.—

1 “(A) IN GENERAL.—Except as provided in
2 paragraph (2), it shall be unlawful for any per-
3 son to knowingly sell, cause another to sell, or
4 conspire to sell a product containing dextrome-
5 thorphan to an individual under the age of 18
6 years, including any such sale using the Inter-
7 net.

8 “(B) FAILURE TO CHECK IDENTIFICA-
9 TION.—If a person fails to request identifica-
10 tion from an individual under the age of 18
11 years and sells a product containing dextrome-
12 thorphan to that individual, that person shall be
13 deemed to have known that the individual was
14 under the age of 18 years.

15 “(C) AFFIRMATIVE DEFENSE.—It shall be
16 an affirmative defense to an alleged violation of
17 subparagraph (A) that the person selling a
18 product containing dextromethorphan examined
19 the purchaser’s identification card and, based
20 on that examination, that person reasonably
21 concluded that the identification was valid and
22 indicated that the purchaser was not less than
23 18 years of age.

1 “(2) EXCEPTION.—This section shall not apply
2 to any sale made pursuant to a validly issued pre-
3 scription.

4 “(b) FINES.—

5 “(1) IN GENERAL.—The Attorney General may
6 impose a civil penalty on a person for violating sub-
7 section (a)(1)(A), including a violation of that sub-
8 section committed by an employee or agent of such
9 person.

10 “(2) MAXIMUM AMOUNT.—A civil penalty im-
11 posed under paragraph (1) shall be—

12 “(A) not more than \$1,000 for the first
13 violation of subsection (a)(1)(A) by a person;

14 “(B) not more than \$2,000 for the second
15 violation of subsection (a)(1)(A) by a person;
16 and

17 “(C) not more than \$5,000 for the third
18 violation, or a subsequent violation, of sub-
19 section (a)(1)(A) by a person.

20 “(3) NUMBER OF VIOLATIONS.—If a person
21 makes sales of dextromethorphan at more than 1 lo-
22 cation, for purposes of determining the number of
23 violations by that person under this subsection each
24 individual location operated by that person shall be
25 considered a separate person.

1 “(c) DEFINITION OF IDENTIFICATION CARD.—In
2 this section, the term ‘identification card’ means an identi-
3 fication card that—

4 “(1) includes a photograph and the date of
5 birth of the individual;

6 “(2) is issued by a State or the Federal Govern-
7 ment; and

8 “(3) is considered acceptable for purposes of
9 sections 274a.2(b)(1)(v)(A) and
10 274a.2(b)(1)(v)(B)(1) of title 8, Code of Federal
11 Regulations (as in effect on or after the date of the
12 enactment of the Dextromethorphan Abuse Reduc-
13 tion Act of 2007).”.

14 (2) REGULATIONS.—

15 (A) INTERNET SALES.—Not later than 180
16 days after the date of enactment of this Act,
17 the Attorney General of the United States shall
18 promulgate regulations for Internet sales of
19 products containing dextromethorphan to en-
20 sure compliance with section 424 of the Con-
21 trolled Substances Act, as added by this Act.

22 (B) CIVIL PENALTIES.—

23 (i) IN GENERAL.—Not later than 180
24 days after the date of enactment of this
25 Act, the Attorney General of the United

1 States shall promulgate regulations to
2 carry out section 424 of the Controlled
3 Substances Act, as added by this Act.

4 (ii) CONTENTS.—The regulations pro-
5 mulgated under clause (i) shall—

6 (I) provide for a range of fines
7 for a retailer, based on whether the
8 retailer or an employee or agent of
9 that retailer has committed prior vio-
10 lations of section 424(a) of the Con-
11 trolled Substances Act, as added by
12 this Act; and

13 (II) require consideration of
14 whether a fine to be imposed on a re-
15 tailer should be reduced or eliminated
16 based on—

17 (aa) the establishment and
18 administration of an effective em-
19 ployee training program by a re-
20 tailer relating to this Act and the
21 amendments made by this Act; or

22 (bb) other actions taken by
23 a retailer to ensure compliance
24 with this Act and the amend-
25 ments made by this Act.

1 (C) DEFINITION OF RETAILER.—In this
2 paragraph, the term “retailer” means a grocery
3 store, general merchandise store, drug store,
4 convenience store, or other entity or person
5 whose activities as a distributor relating to
6 products containing dextromethorphan are lim-
7 ited almost exclusively to sales for personal use,
8 both in number of sales and volume of sales, ei-
9 ther directly to walk-in customers or in face-to-
10 face transactions by direct sales.

11 (3) SENSE OF THE SENATE.—It is the sense of
12 the Senate that—

13 (A) manufacturers of products containing
14 dextromethorphan should contain language on
15 packages cautioning consumers about the dan-
16 gers of dextromethorphan misuse; and

17 (B) retailers selling products containing
18 dextromethorphan should impose appropriate
19 safeguards to protect against the theft of such
20 products.

21 (d) PREVENTION FUNDING.—

22 (1) THE PARTNERSHIP FOR A DRUG-FREE
23 AMERICA.—

24 (A) IN GENERAL.—The Director of Na-
25 tional Drug Control Policy shall make a di-

1 rected grant to the Partnership for a Drug-
2 Free America to provide education to individ-
3 uals under the age of 18 years and parents re-
4 garding preventing the abuse of prescription
5 and nonprescription drugs (including dextrome-
6 thorphan).

7 (B) AUTHORIZATION OF APPROPRIA-
8 TIONS.—In addition to any other amounts au-
9 thorized to be appropriated, there are author-
10 ized to be appropriated \$4,000,000 for each of
11 fiscal years 2008 through 2010 to carry out
12 this paragraph.

13 (2) COMMUNITY ANTI-DRUG COALITION OF
14 AMERICA.—

15 (A) IN GENERAL.—The Director of Na-
16 tional Drug Control Policy shall make a di-
17 rected grant to the Community Anti-Drug Coa-
18 lition of America to provide education, training,
19 and technical assistance to community coali-
20 tions regarding preventing the abuse of pre-
21 scription and nonprescription drugs (including
22 dextromethorphan).

23 (B) AUTHORIZATION OF APPROPRIA-
24 TIONS.—There are authorized to be appro-

1 priated \$4,000,000 for each of fiscal years
2 2008 through 2010 to carry out this paragraph.

3 (3) SUPPLEMENT NOT SUPPLANT.—Grant
4 funds provided under this subsection shall be used to
5 supplement, not supplant, Federal and non-Federal
6 funds available for carrying out the activities de-
7 scribed in this subsection.

8 (e) SUPPLEMENTAL GRANTS FOR COMMUNITIES
9 WITH MAJOR PRESCRIPTION AND NONPRESCRIPTION
10 DRUG ISSUES.—

11 (1) DEFINITIONS.—In this subsection—

12 (A) the term “Administrator” means the
13 Administrator of the Substance Abuse and
14 Mental Health Services Administration;

15 (B) the term “drug” has the meaning
16 given that term in section 201 of the Federal
17 Food, Drug, and Cosmetic Act (21 U.S.C.
18 321);

19 (C) the term “eligible entity” means an or-
20 ganization that—

21 (i) on or before the date of submitting
22 an application for a grant under this sub-
23 section, receives a grant under the Drug-
24 Free Communities Act of 1997 (21 U.S.C.
25 1521 et seq.); and

1 (ii) has documented, using local data,
2 rates of prescription or nonprescription
3 drug abuse above national averages, as de-
4 termined by the Administrator (including
5 appropriate consideration of the Moni-
6 toring the Future Survey by the University
7 of Michigan), for comparable time periods;

8 (D) the term “nonprescription drug” has
9 the meaning given that term in section 760 of
10 the Federal Food, Drug, and Cosmetic Act (21
11 U.S.C. 379aa); and

12 (E) the term “prescription drug” means a
13 drug described in section 503(b)(1) of the Fed-
14 eral Food, Drug, and Cosmetic Act (21 U.S.C.
15 353(b)(1)).

16 (2) AUTHORIZATION OF PROGRAM.—The Ad-
17 ministrator, in consultation with the Director of the
18 Office of National Drug Control Policy, may make
19 enhancement grants to eligible entities to implement
20 comprehensive community-wide strategies that ad-
21 dress abuse of prescription and nonprescription
22 drugs.

23 (3) APPLICATION.—

24 (A) IN GENERAL.—An eligible entity desir-
25 ing an enhancement grant under this subsection

1 shall submit an application to the Adminis-
2 trator at such time, in such manner, and ac-
3 companied by such information as the Adminis-
4 trator may require.

5 (B) CRITERIA.—As part of an application
6 for a grant under this subsection, the Adminis-
7 trator shall require an eligible entity to submit
8 a detailed, comprehensive, multisector plan for
9 addressing abuse of prescription and non-
10 prescription drugs.

11 (4) USES OF FUNDS.—An eligible entity that
12 receives a grant under this subsection shall use the
13 grant funds for implementing a comprehensive, com-
14 munity-wide strategy that addresses abuse of pre-
15 scription and nonprescription drugs issues in that
16 community, in accordance with the plan submitted
17 under paragraph (3)(B).

18 (5) GRANT TERMS.—A grant under this sub-
19 section—

20 (A) shall be made for a period of not more
21 than 4 years; and

22 (B) shall not be in an amount of more
23 than \$50,000 per year.

24 (6) SUPPLEMENT NOT SUPPLANT.—Grant
25 funds provided under this subsection shall be used to

1 supplement, not supplant, Federal and non-Federal
2 funds available for carrying out the activities de-
3 scribed in this subsection.

4 (7) EVALUATION.—A grant under this sub-
5 section shall be subject to the same evaluation re-
6 quirements and procedures as the evaluation re-
7 quirements and procedures imposed on the recipient
8 of a grant under the Drug-Free Communities Act of
9 1997 (21 U.S.C. 1521 et seq.).

10 (8) ADMINISTRATIVE EXPENSES.—Not more
11 than 6 percent of a grant under this subsection may
12 be expended for administrative expenses.

13 (9) AUTHORIZATION OF APPROPRIATIONS.—
14 There are authorized to be appropriated \$4,000,000
15 for each of fiscal years 2008 through 2010 to carry
16 out this subsection.

17 (f) DATA COLLECTION.—It is the Sense of the Senate
18 that Federal agencies and grantees that collect data on
19 drug use trends should ensure that the survey instruments
20 used by such agencies and grantees include questions to
21 ascertain changes in the trend of abuse of prescription and
22 nonprescription drugs.

23 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) IN GENERAL.—Section 201(g) of the Con-
2 trolled Substances Act (21 U.S.C. 811(g)) is amend-
3 ed—

4 (A) by striking paragraph (2); and

5 (B) by redesignating paragraph (3) as
6 paragraph (2).

7 (2) TABLE OF CONTENTS.—The table of con-
8 tents for the Comprehensive Drug Abuse Prevention
9 and Control Act of 1970 (Public Law 91–513; 84
10 Stat. 1236) is amended by inserting after the item
11 relating to section 423 the following:

“Sec. 424. Dextromethorphan sales.”

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