

111TH CONGRESS
1ST SESSION

S. 1383

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

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. DURBIN (for himself and Mr. GRASSLEY) 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 2009”.

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 doses that exceed the recommended levels
2 can produce hallucinations, rapid heart beat, high
3 blood pressure, loss of consciousness, and seizures.
4 The dangers multiply when dextromethorphan is
5 abused with alcohol, prescription drugs, or narcotics.

6 (2) Dextromethorphan is inexpensive, legal, and
7 readily accessible, which has contributed to the in-
8 creased abuse of the 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) An estimated 1,700,000 teenagers (7 per-
17 cent of teens) abused over-the-counter cough medi-
18 cines in 2008.

19 (5) The Food and Drug Administration has
20 called the abuse of dextromethorphan a “serious
21 issue” and has said that while dextromethorphan,
22 “when formulated properly and used in small
23 amounts, can be safely used in cough suppressant
24 medicines, abuse of the drug can cause death as well
25 as other serious adverse events such as brain dam-

1 age, seizure, loss of consciousness, and irregular
2 heart beat.”

3 (6) In recognition of the problem, several retail-
4 ers have voluntarily implemented age restrictions on
5 purchases of cough and cold medicines containing
6 dextromethorphan, and several manufacturers have
7 placed language on packaging of cough and cold
8 medicines alerting parents to the dangers of medi-
9 cine abuse.

10 (7) Prevention is a key component of the effort
11 to address the rise in the abuse of dextromethorphan
12 and other legal medications. Education campaigns
13 teaching teens and parents about the dangers of
14 these drugs are an important part of this effort.

15 **SEC. 3. SALES OF PRODUCTS CONTAINING DEXTROME-**
16 **THORPHAN.**

17 (a) SALES OF PRODUCTS CONTAINING
18 DEXTROMETHORPHAN.—

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

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

24 “(a) IN GENERAL.—

25 “(1) SALE.—

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

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

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 “(3) REGULATIONS.—Not later than 180 days
5 after the date of enactment of this section, the At-
6 torney General shall promulgate regulations for
7 Internet sales of products containing dextromethor-
8 phan to ensure compliance with this subsection. The
9 Attorney General may issue interim rules as nec-
10 essary to ensure that such rules take effect not later
11 than 180 days after the date of enactment of this
12 section.

13 “(b) CIVIL PENALTY.—

14 “(1) IN GENERAL.—The Attorney General may
15 file a civil action in an appropriate United States
16 district court to enforce subsection (a).

17 “(2) MAXIMUM AMOUNT.—Any person who vio-
18 lates subsection (a)(1)(A) shall be subject to a civil
19 penalty in an amount—

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

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

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

4 “(3) EMPLOYEE OR AGENT.—A violation of
5 subsection (a)(1)(A) by an employee or agent of a
6 person shall be deemed a violation by the person as
7 well as a violation by the employee or agent.

8 “(4) FACTORS.—In determining the amount of
9 a civil penalty under this subsection for a person
10 who is a retailer, a court may consider whether the
11 retailer has taken appropriate steps to prevent sub-
12 sequent violations, such as—

13 “(A) the establishment and administration
14 of a documented employee training program to
15 ensure all employees are familiar with and abid-
16 ing by the provisions of this section; or

17 “(B) other actions taken by a retailer to
18 ensure compliance with this section.

19 “(c) DEFINITIONS.—In this section—

20 “(1) the term ‘identification card’ means an
21 identification card that—

22 “(A) includes a photograph and the date of
23 birth of the individual; and

24 “(B) is—

1 “(i) issued by a State or the Federal
2 Government; or

3 “(ii) considered acceptable for pur-
4 poses of sections 274a.2(b)(1)(v)(A) and
5 274a.2(b)(1)(v)(B)(1) of title 8, Code of
6 Federal Regulations (as in effect on or
7 after the date of the enactment of the
8 Dextromethorphan Abuse Reduction Act of
9 2009); and

10 “(2) the term ‘retailer’ means a grocery store,
11 general merchandise store, drug store, pharmacy,
12 convenience store, or other entity or person whose
13 activities as a distributor relating to products con-
14 taining dextromethorphan are limited almost exclu-
15 sively to sales for personal use, both in number of
16 sales and volume of sales, either directly to walk-in
17 customers or in face-to-face transactions by direct
18 sales.”.

19 (2) SENSE OF THE SENATE.—It is the sense of
20 the Senate that—

21 (A) manufacturers of products containing
22 dextromethorphan should continue the practice
23 of including language on packages cautioning
24 consumers about the dangers of dextromethor-
25 phan abuse; and

1 (B) retailers selling products containing
 2 dextromethorphan should implement appro-
 3 priate safeguards to protect against the theft of
 4 such products.

5 (b) PREVENTION FUNDING.—

6 (1) PRESCRIPTION AND NONPRESCRIPTION
 7 DRUG ABUSE PREVENTION GRANTS.—

8 (A) IN GENERAL.—The Director of Na-
 9 tional Drug Control Policy shall provide grants
 10 to one or more eligible entities for the creation
 11 and operation of a nationwide education cam-
 12 paign directed at individuals under the age of
 13 18 years and their parents regarding the pre-
 14 vention of abuse of prescription and non-
 15 prescription drugs (including dextromethor-
 16 phan).

17 (B) ELIGIBLE ENTITY.—For purposes of
 18 subparagraph (A), the term “eligible entity”
 19 means an organization that—

- 20 (i) is a not-for-profit organization;
- 21 (ii) has broad national experience and
- 22 a nationwide presence and capabilities;
- 23 (iii) has specific expertise and experi-
- 24 ence in conducting nationwide education
- 25 campaigns;

(iv) has experience working directly with parents, teens, people in recovery, addiction scientists, and drug specialists to design drug education programs;

(v) has conducted research upon which to base the campaign specified in subparagraph (A);

(vi) has experience generating news media coverage related to drug prevention;

(vii) is able to secure pro bono media time and space to support the campaign specified in subparagraph (A); and

(viii) has a well-established national Internet presence targeting parents seeking information about drug prevention and intervention.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$4,000,000, for each of fiscal years 2010 through 2012 to carry out this paragraph.

(D) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this subsection shall be used to supplement, not supplant, Federal and non-Federal funds available for carrying out the activities described in this subsection.

1 (2) GRANTS FOR EDUCATION, TRAINING AND
2 TECHNICAL ASSISTANCE TO COMMUNITY COALI-
3 TIONS.—

4 (A) IN GENERAL.—The Director of Na-
5 tional Drug Control Policy shall award a grant
6 to the entity created by section 4 of Public Law
7 107–82, as amended by Public Law 109–469
8 (21 U.S.C. 1521 note), for the development and
9 provision of specially tailored education, train-
10 ing, and technical assistance to community coa-
11 litions throughout the nation regarding the pre-
12 vention of abuse of prescription and non-
13 prescription drugs (including dextromethor-
14 phan).

15 (B) AUTHORIZATION OF APPROPRIA-
16 TIONS.—There are authorized to be appro-
17 priated \$1,500,000, for each of fiscal years
18 2010 through 2012 to carry out this paragraph.

19 (C) SUPPLEMENT NOT SUPPLANT.—Grant
20 funds provided under this subsection shall be
21 used to supplement, not supplant, Federal and
22 non-Federal funds available for carrying out the
23 activities described in this subsection.

1 (c) SUPPLEMENTAL GRANTS FOR COMMUNITIES
2 WITH MAJOR PRESCRIPTION AND NONPRESCRIPTION
3 DRUG ISSUES.—

4 (1) DEFINITIONS.—In this subsection—

5 (A) the term “Administrator” means the
6 Administrator of the Substance Abuse and
7 Mental Health Services Administration;

8 (B) the term “drug” has the meaning
9 given that term in section 201 of the Federal
10 Food, Drug, and Cosmetic Act (21 U.S.C.
11 321);

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

14 (i) before the date on which the orga-
15 nization submits an application for a grant
16 under this subsection, has received a grant
17 under the Drug-Free Communities Act of
18 1997 (21 U.S.C. 1521 et seq.); and

19 (ii) has documented, using local data,
20 rates of prescription or nonprescription
21 drug abuse above national averages for
22 comparable time periods, as determined by
23 the Administrator (including appropriate
24 consideration of the Monitoring the Future
25 Survey by the University of Michigan);

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

5 (E) the term “prescription drug” means a
6 drug described in section 503(b)(1) of the Fed-
7 eral Food, Drug, and Cosmetic Act (21 U.S.C.
8 353(b)(1)).

9 (2) AUTHORIZATION OF PROGRAM.—From
10 amounts made available to carry out this subsection,
11 the Administrator, in consultation with the Director
12 of the Office of National Drug Control Policy, shall
13 make enhancement grants to eligible entities to im-
14 plement comprehensive community-wide strategies
15 regarding the prevention of abuse of prescription
16 and nonprescription drugs (including dextromethor-
17 phan).

18 (3) APPLICATION.—

19 (A) IN GENERAL.—An eligible entity seek-
20 ing an enhancement grant under this subsection
21 shall submit an application to the Adminis-
22 trator at such time, in such manner, and ac-
23 companied by such information as the Adminis-
24 trator may require.

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

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

16 (5) GRANT TERMS.—A grant under this sub-
17 section—

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

20 (B) shall not be in an amount of more
21 than \$100,000 per year.

22 (6) SUPPLEMENT NOT SUPPLANT.—Grant
23 funds provided under this subsection shall be used to
24 supplement, not supplant, Federal and non-Federal

1 funds available for carrying out the activities de-
2 scribed in this subsection.

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

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

12 (9) AUTHORIZATION OF APPROPRIATIONS.—
13 There are authorized to be appropriated \$4,000,000
14 for each of fiscal years 2010 through 2012 to carry
15 out this subsection.

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

22 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

“Sec. 424. Civil penalties for certain dextromethorphan sales.”.

