II

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Dextromethorphan Abuse Reduction Act of 2007''.

SEC. 2. FINDINGS.

Congress finds the following:

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

phan at high doses can produce hallucinations, rapid heart beat, high blood pressure, loss of consciousness, and seizures. The dangers multiply when dextromethorphan is abused with alcohol, prescription drugs, or narcotics.

(2) Dextromethorphan is inexpensive, legal, and readily accessible, which has contributed to the increased abuse of that drug, particularly among teenagers.

(3) Increasing numbers of teens and others are abusing dextromethorphan by ingesting it in excessive quantities. Prolonged use at high doses can lead to psychological dependence on the drug. Abuse of dextromethorphan can also cause impaired judgment, which can lead to injury or death.

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

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

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

issue'' and a ''disturbing new trend'' that can cause ''death as well as other serious adverse events such as brain damage, seizure, loss of consciousness, and irregular heartbeat.''.

(7) In recognition of the problem, several retailers have voluntarily implemented age restrictions on purchases of cough and cold medicines containing dextromethorphan.

(8) Prevention is a key component of addressing the rise in the abuse of legal medications. Education campaigns teaching teens and parents about the dangers of these drugs are an important part of this effort.

SEC. 3. DEXTROMETHORPHAN.

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

''(50) The term 'finished dosage form', relating to dextromethorphan, means dextromethorphan that—

''(A) is—

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

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

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

''(B) has been combined with other active or inactive ingredients during the process of manufacturing a tablet, capsule, solution, liquid, or other form described in subparagraph (A).

''(51) The term 'unfinished', relating to dextromethorphan, means any concentration or amount of dextromethorphan that is not in finished dosage form.''.

(b) UNFINISHED DEXTROMETHORPHAN.—Schedule V of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended by adding at the end the following:

''(6) Unfinished dextromethorphan.''.

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

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

''SEC. 424. CIVIL PENALTIES FOR CERTAIN DEXTROMETHORPHAN SALES.

''(a) IN GENERAL.—

''(1) SALE.—

"(A) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly sell, cause another to sell, or conspire to sell a product containing dextromethorphan to an individual under the age of 18 years, including any such sale using the Internet.

"(B) FAILURE TO CHECK IDENTIFICATION.—If a person fails to request identification from an individual under the age of 18 years and sells a product containing dextromethorphan to that individual, that person shall be deemed to have known that the individual was under the age of 18 years.

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

''(2) EXCEPTION.—This section shall not apply to any sale made pursuant to a validly issued prescription.

''(b) FINES.—

''(1) IN GENERAL.—The Attorney General may impose a civil penalty on a person for violating subsection (a)(1)(A), including a violation of that subsection committed by an employee or agent of such person.

''(2) MAXIMUM AMOUNT.—A civil penalty imposed under paragraph (1) shall be—

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

''(B) not more than $2,000 for the second violation of subsection (a)(1)(A) by a person; and

''(C) not more than $5,000 for the third violation, or a subsequent violation, of subsection (a)(1)(A) by a person.

''(3) NUMBER OF VIOLATIONS.—If a person makes sales of dextromethorphan at more than 1 location, for purposes of determining the number of violations by that person under this subsection each individual location operated by that person shall be considered a separate person.

''(c) DEFINITION OF IDENTIFICATION CARD.—In this section, the term 'identification card' means an identification card that—

''(1) includes a photograph and the date of birth of the individual;

''(2) is issued by a State or the Federal Government; and

''(3) is considered acceptable for purposes of sections 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B)(1) of title 8, Code of Federal Regulations (as in effect on or after the date of the enactment of the Dextromethorphan Abuse Reduction Act of 2007).''.

(2) REGULATIONS.—

(A) INTERNET SALES.—Not later than 180 days after the date of enactment of this Act, the Attorney General of the United States shall promulgate regulations for Internet sales of products containing dextromethorphan to ensure compliance with section 424 of the Controlled Substances Act, as added by this Act.

(B) CIVIL PENALTIES.—

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

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

(ii) CONTENTS.—The regulations promulgated under clause (i) shall—

(I) provide for a range of fines for a retailer, based on whether the retailer or an employee or agent of that retailer has committed prior violations of section 424(a) of the Controlled Substances Act, as added by this Act; and

(II) require consideration of whether a fine to be imposed on a retailer should be reduced or eliminated based on—

(aa) the establishment and administration of an effective employee training program by a retailer relating to this Act and the amendments made by this Act; or

(bb) other actions taken by a retailer to ensure compliance with this Act and the amendments made by this Act.

(C) DEFINITION OF RETAILER.—In this paragraph, the term ''retailer'' means a grocery store, general merchandise store, drug store, convenience store, or other entity or person whose activities as a distributor relating to products containing dextromethorphan are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

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

(A) manufacturers of products containing dextromethorphan should contain language on packages cautioning consumers about the dangers of dextromethorphan misuse; and

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

(d) PREVENTION FUNDING.—

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

(A) IN GENERAL.—The Director of National Drug Control Policy shall make a di-

rected grant to the Partnership for a Drug-Free America to provide education to individuals under the age of 18 years and parents regarding preventing the abuse of prescription and nonprescription drugs (including dextromethorphan).

(B) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated, there are authorized to be appropriated $4,000,000 for each of fiscal years 2008 through 2010 to carry out this paragraph.

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

(A) IN GENERAL.—The Director of National Drug Control Policy shall make a directed grant to the Community Anti-Drug Coalition of America to provide education, training, and technical assistance to community coalitions regarding preventing the abuse of prescription and nonprescription drugs (including dextromethorphan).

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appro-

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

(3) 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.

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

(1) DEFINITIONS.—In this subsection—

(A) the term ''Administrator'' means the Administrator of the Substance Abuse and Mental Health Services Administration;

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

(C) the term ''eligible entity'' means an organization that—

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

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

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

(E) the term ''prescription drug'' means a drug described in section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)).

(2) AUTHORIZATION OF PROGRAM.—The Administrator, in consultation with the Director of the Office of National Drug Control Policy, may make enhancement grants to eligible entities to implement comprehensive community-wide strategies that address abuse of prescription and nonprescription drugs.

(3) APPLICATION.—

(A) IN GENERAL.—An eligible entity desiring an enhancement grant under this subsection

shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may require.

(B) CRITERIA.—As part of an application for a grant under this subsection, the Administrator shall require an eligible entity to submit a detailed, comprehensive, multisector plan for addressing abuse of prescription and nonprescription drugs.

(4) USES OF FUNDS.—An eligible entity that receives a grant under this subsection shall use the grant funds for implementing a comprehensive, community-wide strategy that addresses abuse of prescription and nonprescription drugs issues in that community, in accordance with the plan submitted under paragraph (3)(B).

(5) GRANT TERMS.—A grant under this subsection—

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

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

(6) 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.

(7) EVALUATION.—A grant under this subsection shall be subject to the same evaluation requirements and procedures as the evaluation requirements and procedures imposed on the recipient of a grant under the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.).

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

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

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

(g) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 201(g) of the Controlled Substances Act (21 U.S.C. 811(g)) is amended—

(A) by striking paragraph (2); and

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

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

''Sec. 424. Dextromethorphan sales.''.

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