

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 182
Economic Matters

(Delegate Stein, *et al.*)

Alcohol Energy Drinks - Prohibition

This bill prohibits the importation, production, distribution, sale, or offering for sale in the State “alcohol energy drinks.” An alcohol energy drink is an alcoholic beverage to which the manufacturer has directly added caffeine, guarana, taurine, or other similar substances as a separate ingredient. A person who violates this provision is guilty of a misdemeanor and subject to a fine not exceeding \$1,000. Each violation is a separate offense.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in the District Court. State law enforcement agencies can handle any enforcement activity with existing resources.

Local Effect: None. Local law enforcement agencies can handle any enforcement activity with existing resources.

Small Business Effect: None.

Analysis

Current Law/Background: Caffeinated alcoholic beverages (CABs) have raised health concerns at both the state and national level. Guarana contains high concentrations of caffeine. Taurine is an amino acid often included in energy drinks, including CABs.

In 2008, 13 State Attorneys General and the San Francisco City Attorney initiated an investigation of CABs, which resulted in negotiated settlements with two producers who agreed to remove all stimulants from their products. The U.S. Food and Drug Administration (FDA) announced on November 17, 2010, that it had sent warning letters to four companies that make versions of these beverages, advising them that the caffeine included as a separate ingredient is an unsafe food additive. According to FDA, caffeine can mask sensory cues that people may rely on to determine their level of intoxication. Malt versions of these products hold between 12 and 32 liquid ounces and advertise an alcohol-by-volume value as high as 12%, while alcohol-by-volume for a standard beer is generally 4% to 5%.

On November 17, 2010, the State Comptroller reached an agreement with the trade associations representing wholesalers (Maryland Beer Wholesalers Association, Inc.) and retailers (Maryland State Licensed Beverage Association) to voluntarily ban CABs. Also in November, the Department of Health and Mental Hygiene issued a letter to the trade associations stating that caffeine when added to a malt alcoholic beverage is an “unsafe food additive” and therefore caffeinated alcoholic beverages constitute an adulterated food under State law. The letter called for wholesalers to refrain from distributing and retailers to refrain from selling these adulterated products.

Under State law, the Secretary of Health and Mental Hygiene may adopt a rule or regulation that prohibits the use of a “deleterious substance,” food additive, or color additive; or set tolerances or conditions for the safe use of the substance or additive.

Eleven states (California, Hawaii, Indiana, Illinois, New Jersey, New York, Oklahoma, Rhode Island, South Carolina, South Dakota, and Vermont) are considering legislation that would ban CABs. New Mexico is considering a study of the issue. Because CABs may have higher alcohol content than beer, some states have classified them as liquor, thereby limiting the locations where these beverages can be sold.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller’s Office, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2011
ncs/hlb

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