

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1273

(Delegate Dumais, *et al.*)

Economic Matters

Criminal Law - Energy Drinks - Sale to and Possession by Minors Prohibited

This bill prohibits a person from (1) distributing, selling, furnishing, giving away or offering to sell, furnish, or give away an “energy drink” to a minor; (2) selling or offering for sale an energy drink by means of a vending machine or any other automatic device; (3) providing free samples of energy drinks or coupons for free or discounted energy drinks to minors; and (4) possessing an energy drink, if the person is younger than age 18.

An “energy drink” is a beverage, an energy shot, or a powdered drink mix that contains (1) 71 milligrams (mg) or more of caffeine per 12-ounce serving from any source or combination of sources and (2) taurine, guarana, panax ginseng, inositol, or L-Carnitine in any amount.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines imposed in the District Court. Minimal increase in special fund revenues due to additional revenues generated from court costs and distributed to the Criminal Injuries Compensation Fund, the State Victims of Crime Fund, and the Victim and Witness Protection and Relocation Fund. Enforcement and District Court caseloads can be handled with existing budgeted State resources.

Local Effect: Minimal increase in local revenues from fines imposed in circuit court cases. Enforcement and circuit court caseloads can be handled with existing budgeted local resources.

Small Business Effect: Potential meaningful impact on small businesses that sell energy drinks and small businesses subject to penalties under the bill.

Analysis

Bill Summary: **Exhibit 1** contains information on the offenses created by the bill and their respective penalties.

Exhibit 1 **Energy Drink Offenses, Penalties, and Related Provisions**

<u>Offense</u>	<u>Penalties</u>	<u>Related Provisions</u>
Distributing, selling, furnishing, or giving away an energy drink to a minor	Misdemeanor First offense: \$500 maximum fine Second offense within two years after first offense: \$1,000 maximum fine Third or subsequent offense within two years after preceding violation: \$2,000 maximum fine	It is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by specified entities that identified the purchaser or recipient as being at least age 18. Each separate incident that occurs at a different time and occasion is a violation.
Selling or offering to sell an energy drink by means of a vending machine or other automatic device	Misdemeanor First offense: \$500 maximum fine Second offense within two years after first offense: \$1,000 maximum fine Third or subsequent offense within two years after preceding violation: \$2,000 maximum fine	Each vending machine or other automatic device is a violation.

Offense	Penalties	Related Provisions
Providing free samples of energy drinks or coupons for free or discounted energy drinks to minors	Misdemeanor First offense: \$5,000 maximum fine Second offense within two years after first offense: \$10,000 maximum fine Third or subsequent offense within two years after preceding violation: \$20,000 maximum fine	Each separate date on which a sample or coupon is distributed is a violation. This prohibition does not apply if the coupon is contained in a publication in which the coupon is incidental to the primary purpose of the publication.
Possession of an energy drink by a person younger than age 18	Citation offense, civil offense and code violation First offense: \$50 maximum fine Second or subsequent offense: \$100 maximum fine	A person charged with a violation of this prohibition is subject to juvenile court procedures and dispositions. Fines for these violations may not be prepaid.

Source: Department of Legislative Services

The bill contains several provisions regarding the issuance of a citation for underage possession of an energy drink and adjudication of these citation offenses.

Current Law: State law does not restrict or prohibit the consumption of energy drinks by minors.

Background: The Food and Drug Administration (FDA) limits the caffeine content for sodas to 71 mg for 12 ounces of soda. Energy drinks are sold as dietary/nutritional supplements and, as such, are not regulated as food and not held to this standard. These drinks typically contain high amounts of caffeine (from 80 mg to more than 500 mg) and other additives, such as vitamins, taurine (an amino acid that can act as a neurotransmitter), guarana (a South American plant that produces seeds with 4% to 5% caffeine content), and ginseng.

Given the growing popularity of these drinks, concerns have been raised over the effects of high level caffeine consumption, especially among young people. In November 2012, the FDA announced that it would continue to investigate reports of illness, injury, or death of people who consumed energy drinks or “energy shot” beverages.

According to the Substance Abuse and Mental Health Administration, the number of energy drink-related emergency room visits doubled from 10,068 visits in 2007 to 20,783 visits in 2011. Individuals between 18 and 25 years of age made the most number of emergency room visits (35%), followed by individuals ages 26 to 39 (32.3%). Of the 2011 emergency room visits, 58% involved energy drinks only, while 42% involved other substances.

In October 2012, the parents of a 14-year-old Hagerstown girl with a preexisting heart condition who died after consuming two large cans of an energy drink in a 24-hour period, filed a wrongful death lawsuit against Monster Beverage Corporation, the largest energy drink manufacturer in the United States by sales volume. The medical examiner determined her official cause of death to be cardiac arrhythmia due to caffeine toxicity.

State Revenues: Though the bill specifies that adjudication of a code violation is not considered a criminal conviction, the bill states that a defendant “is liable for the costs of the proceedings in the District Court and for payment to the Criminal Injuries Compensation Fund.” The bill also establishes that court costs in a code violation case for underage possession of an energy drink are \$5. Thus, it is assumed that a defendant subject to a citation under the bill has to pay the \$35 Criminal Injuries Compensation costs imposed on defendants convicted of a crime in the District Court and the \$5 court cost authorized under the bill. As a result, special fund revenues may increase minimally due to additional revenues generated from court costs and distributed to the Criminal Injuries Compensation Fund, the State Victims of Crime Fund, and the Victim and Witness Protection and Relocation Fund. The distribution of applicable court costs and Criminal Injuries Compensation costs to these special funds is described below.

Court costs are imposed on a defendant convicted of a crime in the amount of \$35 for the District Court. These costs are sometimes referred to as Criminal Injuries Compensation costs. The Comptroller deposits each \$35 fee collected in the District Court into various special funds as follows: (1) \$12.50 into the State Victims of Crime Fund (administered by the Governor’s Office of Crime Control and Prevention); (2) \$2.50 into the Victim and Witness Protection and Relocation Fund (administered by the State’s Attorneys’ coordinator); and (3) the remainder (\$20) into the Criminal Injuries Compensation Fund (administered by the Criminal Injuries Compensation Board in the Department of Public Safety and Correctional Services).

A court may also impose separate court costs on a defendant in a criminal or traffic case. In addition to the monies transferred as described above, the Comptroller is required to distribute funds from court costs imposed in District Court criminal and traffic cases as follows: (1) \$500,000 to the Criminal Injuries Compensation Fund; and (2) \$125,000 to the Victim and Witness Protection and Relocation Fund.

Local Fiscal Effect: Howard County does not anticipate a significant fiscal impact from the bill. Montgomery County and the City of Bowie advise that the bill does not have a fiscal impact on their jurisdictions.

Additional Information

Prior Introductions: None.

Cross File: SB 986 (Senator Feldman, *et al.*) - Rules.

Information Source(s): Howard and Montgomery counties; City of Bowie; Maryland State Commission on Criminal Sentencing Policy; Department of Natural Resources; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Maryland Department of Transportation; University System of Maryland; Substance Abuse and Mental Health Administration; Villanova University – Office of Health Promotion; WebMD Health News; Bloomberg.com; today.com; CNBC.com; *The New York Times*; *The Washington Post*; Department of Legislative Services

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