Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 7*

131st General Assembly
(As Reported by S. Criminal Justice)

Sens. Manning, Obhof, Beagle, Jones, Lehner, Schiavoni, Tavares

BILL SUMMARY

- Generally prohibits a person from knowingly selling or offering for sale a pure caffeine product.

CONTENT AND OPERATION

Offense of "illegal sale of pure caffeine"

Prohibition and penalty

The bill prohibits a person, subject to the exceptions described below, from knowingly selling or offering for sale a "pure caffeine product." A violation of the prohibition is the offense of "illegal sale of pure caffeine," a minor misdemeanor on a first offense and a third degree misdemeanor on each subsequent offense.[1]

As used in this prohibition, "pure caffeine product" means a product that consists solely or primarily of caffeine and is manufactured into a crystalline, liquid, or powdered form. "Pure caffeine product" does not include any of the following that contains caffeine and is formulated, manufactured, and labeled in accordance with the laws and regulations enforced by the U.S. Food and Drug Administration: coffee, tea, any soft drink, any energy drink, any other caffeine-containing beverage, or any energy product.[2]

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* This analysis was prepared before the report of the Senate Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

[1] R.C. 2925.34(A) and (E).

[2] R.C. 2925.34(A).

Exceptions

The prohibition does not prohibit a person from selling or offering for sale any product manufactured in a unit-dose form such as a pill, tablet, or caplet, but only if each unit dose of the product contains not more than 250 milligrams of caffeine.[3]

Exemptions

The bill specifies that its provisions do not prohibit either possession of a product described in the preceding paragraph, or possession of a pure caffeine product by any of the following (see "**Background**," below for relevant definitions and licensing information): (1) a "food processing establishment," (2) a manufacturer of a drug that is available without a prescription, (3) a laboratory with a current, valid "Category III terminal distributor of dangerous drugs license" issued by the State Board of Pharmacy, (4) a "laboratory" within the existing definition of the term described below, (5) a laboratory of any state agency or department that performs testing, analysis, and other laboratory services for the state, or (6) a postal or delivery service that transports or delivers a pure caffeine product to an entity specified in (1) through (5).[4]

Background

Definitions

As used in the bill:[5]

"**Food processing establishment**" means a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. "**Food processing establishment**" includes the activities of a bakery, confectionery, cannery, bottler, warehouse, or distributor, and the activities of an entity that receives or salvages distressed food for sale or use as food. "**Food processing establishment**" does not include a cottage food production operation, a processor of maple syrup who boils sap when a minimum of 75% of the sap used to produce the syrup is collected directly from trees by that processor, a processor of sorghum who processes sorghum juice when a minimum of 75% of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor, or a beekeeper who jars honey when a minimum of 75% of the honey is from that beekeeper's own hives.

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[3] R.C. 2925.34(C).

[4] R.C. 2925.34(D).

[5] R.C. 2925.34, by reference to R.C. 3715.021 and 3719.01, which are not in the bill.

"**Laboratory,**" as used in exemption (4), means a laboratory approved by the State Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.

Category III terminal distributor of dangerous drugs license

The State Board of Pharmacy issues "terminal distributors of dangerous drug" licenses to applicants that satisfy specified criteria. There are six categories of licenses, with each category having different authority. A person who obtains a "Category III terminal distributor of dangerous drugs" license may possess, have custody or control of, and distribute the dangerous drugs described in Category I, Category II, and Category III. A Category III license may include a pain management clinic classification separately issued by the State Board of Pharmacy. If the license includes a pain management clinic classification, the person may operate a pain management clinic.

As used in these provisions: (1) "Category I" means single-dose injections of intravenous fluids, including saline, Ringer's lactate, 5% dextrose and distilled water, and other intravenous fluids or parenteral solutions included in this category by rule of the State Board of Pharmacy, that have a volume of 100 milliliters or more and that contain no added substances, or single-dose injections of epinephrine to be administered pursuant to specified provisions of the Emergency Medical Services Law, (2) "Category II" means any dangerous drug not included in Category I or III, and (3) "Category III" means any controlled substance contained in Controlled Substance Schedule I, II, III, IV, or V established under the Controlled Substances Law.[6]

HISTORY

ACTION	DATE
Introduced	02-02-15
Reported, S. Criminal Justice	---

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[6] R.C. 4729.54.