



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 7 of the 131st G.A.

Date: June 3, 2015

Status: As Enacted

Sponsor: Sen. Manning

Local Impact Statement Procedure Required: No

Contents: Prohibits generally the sale of pure caffeine products and sale of powdered or crystalline alcohol for human consumption

State Fiscal Highlights

- Violations of the bill's prohibitions may generate, at most, a minimal annual amount of locally collected state court cost revenue for deposit into the Indigent Defense Support Fund (Fund 5DY0) and the Victim of Crime/Reparations Fund (Fund 4020).
- The Attorney General, the Department of Public Safety, and the Liquor Control Commission could each incur a minimal annual cost for enforcing the prohibition against the sale of powdered or crystalline alcohol for human consumption.

Local Fiscal Highlights

- In-state businesses will generally comply with the bill's pure caffeine prohibition, making violations infrequent and mostly minor misdemeanors. It is likely that the revenues collected from violators (fines, court costs, and fees) will offset to some degree the costs that counties and municipalities incur to process minor misdemeanors.
- Local law enforcement agencies and courts could also incur costs to enforce the powdered or crystalline alcohol prohibition.

Detailed Fiscal Analysis

Sale of pure caffeine products

The bill generally prohibits a person from knowingly selling or offering for sale a pure caffeine product. A violation of the prohibition is a minor misdemeanor on a first offense and a third degree misdemeanor on each subsequent offense.

Under current law, unchanged by the bill, law enforcement can only issue a citation for a minor misdemeanor; the person being cited generally cannot be arrested. If the person pays the associated fine of up to \$150, court costs, and fees, that person is in effect pleading guilty and waiving the requirement that they make a court appearance. For a misdemeanor of the third degree, the associated sanction is a fine of up to \$500, a jail stay of up to 60 days, or both.

Currently, pure caffeine products are neither banned nor regulated as controlled substances. Ohio has no restrictions in place on the sale, possession, or use of such products. Pure caffeine products are bought either at a store, such as a convenience mart, nutrition center, or health store, or online. It appears that these products are relatively inexpensive and easy to purchase. Very little is known about the sale and use of pure caffeine products in Ohio.

The U.S. Congress is aware and concerned; the U.S. Food and Drug Administration (FDA) is also getting pressure to regulate sales. The FDA has no authority, but has asked for voluntary compliance.

Presumably, once the bill's prohibition is enacted, legitimate sellers with a physical presence in Ohio generally will stop sales, most violations will be one-time only, and subsequent violations will be relatively few in number. It is unclear how violations by out-of-state online sellers would be enforced.

A potentially problematic unknown is whether demand will be strong enough that some individuals may opt to sell pure caffeine products illegally. This means there could be more enforcement and prosecution activity than one might expect by just looking at current sales activity.

The amount of locally collected state court costs that might be forwarded to the state treasury annually is likely to be no more than minimal, assuming there is a high degree of compliance. The state court costs for a misdemeanor conviction generally total \$29, with \$20 of that amount being deposited in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the remainder, or \$9, being credited to the Victims of Crime/Reparations Fund (Fund 4020).

As noted, it is likely that businesses with a physical presence in Ohio generally will stop pure caffeine product sales subsequent to enactment of the bill's prohibition. Most violations are likely to be first-time offenders and subsequent violations will be relatively few in number. The time and cost to process a minor misdemeanor is relatively low, with most persons cited typically opting to pay the fine, court costs, and

fees, and waive a court appearance. This likely means that in many cases the fines, court costs, and fees collected will offset some, if not all, of the cost associated with processing citations.

Sale of powdered or crystalline alcohol

The bill prohibits the sale or offering for sale of powdered or crystalline alcohol for human consumption. The bill defines "powdered or crystalline alcohol" as a product that is manufactured into a powdered or crystalline form that contains any amount of alcohol. Powdered or crystalline alcohol does not include any substance that is regulated by the FDA (excluding beer or liquor or a compound that could be converted into beer or liquor), a medication that requires a prescription, or an over-the-counter medication.

On the state level, the Attorney General, the Department of Public Safety, and the Liquor Control Commission (LCO) investigate and enforce liquor violations. As a consequence of any resulting criminal convictions, the state could collect some additional court cost revenue that would be deposited into Fund 5DY0 and Fund 4020. For cases adjudicated by LCO, the proceeds from any forfeitures (cash fines) imposed would be deposited into the GRF. Local law enforcement agencies might also incur costs for enforcing the prohibition. Any resulting fines and local court costs and fees collected from offenders would be deposited into the general fund of the county where the court that adjudicated the case is located.