UPDATED VERSION*

Ohio Legislative Service Commission

Final Analysis

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Sub. S.B. 7

131st General Assembly
(As Passed by the General Assembly)

Sens. Manning, Obhof, Beagle, Jones, Lehner, Schiavoni, Tavares, Bacon, Hughes, Brown, Burke, Eklund, Faber, Gardner, Hite, Oelslager, Patton, Sawyer, Skindell, Thomas, Widener

Reps. Brown, Buchy, Derickson, Gerberry, Green, Leland, Pelanda, R. Smith, Anielski, Antonio, Barnes, Boose, Boyce, Celebrezze, Cupp, DeVitis, Dovilla, Grossman, Hackett, Hagan, Hall, Huffman, G. Johnson, T. Johnson, Koehler, Kraus, Manning, M. O'Brien, Patterson, Perales, Rogers, Schaffer, Sheehy, Slaby, K Smith, Sprague, Strahorn, Rosenberger

Effective date: September 24, 2015

ACT SUMMARY

- Generally prohibits a person from knowingly selling or offering for sale a pure caffeine product.
- Generally prohibits any person from selling or offering for sale powdered or crystalline alcohol for human consumption.
- Exempts from the prohibition regarding powdered or crystalline alcohol certain substances and medications, including any substance regulated by the Food and Drug Administration that is not beer or intoxicating liquor or a compound that could be converted into beer or intoxicating liquor.

* This version updates the effective date.

CONTENT AND OPERATION

Offense of "illegal sale of pure caffeine"

Prohibition and penalty

The act prohibits a person, subject to the exceptions described below, from knowingly selling or offering for sale a "pure caffeine product." A violation 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]

A "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]

Exception

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 contains no more than 250 milligrams of caffeine.[3]

Exemptions

The act specifies that its provisions do not prohibit either (1) possession of a product described in the preceding paragraph, or (2) possession by any of the following of a pure caffeine product: (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

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

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

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

(5).[4] (See "**Background on caffeine exemptions**," below for relevant definitions and licensing information.)

Sale of powdered or crystalline alcohol

The act generally prohibits any person from selling or offering for sale powdered or crystalline alcohol for human consumption. However, it exempts the following from the prohibition:

(1) Any substance regulated by the Food and Drug Administration that is not beer or intoxicating liquor, or a compound that could be converted into beer or intoxicating liquor;

(2) A medication that requires a prescription; and

(3) An over-the-counter medication.

Under the act, powdered or crystalline alcohol is a product that is manufactured into a powdered or crystalline form and that contains any amount of alcohol. A prescription is a written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs. An over-the-counter medication is a medication that may be legally sold and purchased without a prescription.[5]

Background on caffeine exemptions

Definitions

"**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 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, certain processors of maple syrup or sorghum, or certain beekeepers who jar honey from their own hives.

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

[5] R.C. 4301.71.

"**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 their use for scientific, clinical, and instructional purposes.[6]

Category III terminal distributor of dangerous drugs license

The State Board of Pharmacy issues six categories of "terminal distributors of dangerous drug" licenses, with each category having different authority. A person who obtains a Category III license may possess, have custody or control of, and distribute the dangerous drugs in Categories I, II, and III.

"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 Board, 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. "Category II" means any dangerous drug not included in Category I or III. "Category III" means any controlled substance contained in Controlled Substance Schedule I, II, III, IV, or V established under the Controlled Substances Law.[7]

HISTORY

ACTION	DATE
Introduced	02-02-15
Reported, S. Criminal Justice	04-22-15
Passed Senate (32-1)	04-29-15
Reported, H. Gov't Accountability and Oversight	05-27-15
Passed House (92-3)	05-27-15
Senate concurred in House amendments (26-5)	06-03-15

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

[7] R.C. 4729.54, not in the act.