

HOUSE BILL 1273

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4r1318
CF 4r3063

By: **Delegates Dumais, Lee, Rosenberg, and Waldstreicher**

Introduced and read first time: February 7, 2014

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Energy Drinks – Sale to and Possession by Minors Prohibited**

3 FOR the purpose of prohibiting a person from distributing, selling, furnishing, or
4 giving away or offering to sell, furnish, or give away an energy drink to a minor;
5 establishing a certain defense for a prosecution for a certain violation;
6 prohibiting a person from selling or offering to sell an energy drink in a vending
7 machine or any other automatic device; prohibiting a person from providing free
8 samples of energy drinks or coupons for free or discounted energy drinks to
9 minors in a certain manner; establishing certain penalties for certain violations
10 of this Act; clarifying when certain violations have occurred; prohibiting a minor
11 from possessing an energy drink; establishing that a person who violates a
12 certain provision of this Act shall be issued a certain citation; authorizing
13 certain individuals to issue certain citations under certain circumstances;
14 requiring the State Court Administrator to prescribe a certain form of citation;
15 requiring the citation to be uniform and contain certain information; requiring
16 the jurisdiction that issues a certain citation to forward a copy of the citation
17 and a request for trial to the District Court having a certain venue; requiring
18 the District Court to schedule a certain trial and summon a certain defendant to
19 appear; providing that a willful failure to respond to a certain summons is
20 contempt of court; establishing that a violation of a certain provision of this Act
21 is a Code violation and a civil offense; providing that a minor is subject to
22 certain procedures and dispositions; establishing that an adjudication of a
23 certain Code violation is not a criminal conviction for any purpose and does not
24 impose certain disabilities; establishing certain procedures for a certain Code
25 violation proceeding; prohibiting the Chief Judge of the District Court from
26 establishing a certain schedule for the prepayment of fines; authorizing a court
27 to direct that the payment of a certain fine be suspended or deferred;
28 establishing that the willful failure to pay a certain fine is a criminal contempt
29 of court; providing that a certain defendant is liable for certain costs;
30 establishing that a certain defendant has certain rights to appeal or file certain
31 motions; authorizing the State's Attorney to prosecute a certain violation in a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain manner; defining a certain term; and generally relating to minors and
2 energy drinks.

3 BY adding to

4 Article – Criminal Law

5 Section 10–136 through 10–140 to be under the new part “Part V. Energy
6 Drinks”

7 Annotated Code of Maryland

8 (2012 Replacement Volume and 2013 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Criminal Law**

12 **10–134. RESERVED.**

13 **10–135. RESERVED.**

14 **PART V. ENERGY DRINKS.**

15 **10–136.**

16 **IN THIS PART, “ENERGY DRINK” MEANS A BEVERAGE, AN ENERGY SHOT,**
17 **OR A POWDERED DRINK MIX THAT CONTAINS:**

18 **(1) 71 MILLIGRAMS OR MORE OF CAFFEINE PER 12–OUNCE**
19 **SERVING FROM ANY SOURCE OR COMBINATION OF SOURCES; AND**

20 **(2) ANY ONE OF THE FOLLOWING INGREDIENTS IN ANY AMOUNT:**

21 **(I) TAURINE;**

22 **(II) GUARANA;**

23 **(III) PANAX GINSENG;**

24 **(IV) INOSITOL; OR**

25 **(V) L–CARNITINE.**

26 **10–137.**

1 **(A) A PERSON MAY NOT DISTRIBUTE, SELL, FURNISH, GIVE AWAY, OR**
2 **OFFER TO SELL, FURNISH, OR GIVE AWAY AN ENERGY DRINK TO A MINOR.**

3 **(B) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A**
4 **DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER'S OR RECIPIENT'S**
5 **DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER,**
6 **A GOVERNMENTAL UNIT, OR AN INSTITUTION OF HIGHER EDUCATION THAT**
7 **POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 18 YEARS**
8 **OLD.**

9 **(C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**
10 **MISDEMEANOR AND, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
11 **SUBSECTION, ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500.**

12 **(2) (I) A PERSON WHO IS CONVICTED OF A SECOND VIOLATION**
13 **OF THIS SECTION OCCURRING WITHIN 2 YEARS AFTER THE FIRST VIOLATION IS**
14 **SUBJECT TO A FINE NOT EXCEEDING \$1,000.**

15 **(II) A PERSON WHO IS CONVICTED OF A THIRD OR**
16 **SUBSEQUENT VIOLATION OF THIS SECTION OCCURRING WITHIN 2 YEARS AFTER**
17 **THE PRECEDING VIOLATION IS SUBJECT TO A FINE NOT EXCEEDING \$2,000.**

18 **(D) FOR THE PURPOSES OF THIS SECTION, EACH SEPARATE INCIDENT**
19 **THAT OCCURS AT A DIFFERENT TIME AND OCCASION IS A VIOLATION.**

20 **10-138.**

21 **(A) A PERSON MAY NOT SELL OR OFFER FOR SALE AN ENERGY DRINK**
22 **BY MEANS OF A VENDING MACHINE OR ANY OTHER AUTOMATIC DEVICE.**

23 **(B) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**
24 **MISDEMEANOR AND, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
25 **SUBSECTION, ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500.**

26 **(2) (I) A PERSON WHO IS CONVICTED OF A SECOND VIOLATION**
27 **OF THIS SECTION OCCURRING WITHIN 2 YEARS AFTER THE FIRST VIOLATION IS**
28 **SUBJECT TO A FINE NOT EXCEEDING \$1,000.**

29 **(II) A PERSON WHO IS CONVICTED OF A THIRD OR**
30 **SUBSEQUENT VIOLATION OF THIS SECTION OCCURRING WITHIN 2 YEARS AFTER**
31 **THE PRECEDING VIOLATION IS SUBJECT TO A FINE NOT EXCEEDING \$2,000.**

1 **(C) FOR THE PURPOSE OF THIS SECTION, EACH VENDING MACHINE OR**
2 **OTHER AUTOMATIC DEVICE IS A SEPARATE VIOLATION.**

3 **10-139.**

4 **(A) THIS SECTION DOES NOT APPLY TO THE DISTRIBUTION OF A**
5 **COUPON FOR A FREE OR DISCOUNTED ENERGY DRINK IF THE COUPON IS**
6 **CONTAINED IN A NEWSPAPER, A MAGAZINE, OR ANY OTHER TYPE OF**
7 **PUBLICATION IN WHICH THE COUPON IS INCIDENTAL TO THE PRIMARY**
8 **PURPOSE OF THE PUBLICATION.**

9 **(B) A PERSON MAY NOT PROVIDE FREE SAMPLES OF ENERGY DRINKS**
10 **OR COUPONS FOR FREE OR DISCOUNTED ENERGY DRINKS TO MINORS,**
11 **INCLUDING BY PUBLISHING, DISSEMINATING, CIRCULATING, OR DIRECT**
12 **MAILING FREE SAMPLES OF ENERGY DRINKS OR COUPONS FOR FREE OR**
13 **DISCOUNTED ENERGY DRINKS TO MINORS.**

14 **(C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**
15 **MISDEMEANOR AND, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
16 **SUBSECTION, ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000.**

17 **(2) (I) A PERSON WHO IS CONVICTED OF A SECOND VIOLATION**
18 **OF THIS SECTION OCCURRING WITHIN 2 YEARS AFTER THE FIRST VIOLATION IS**
19 **SUBJECT TO A FINE NOT EXCEEDING \$10,000.**

20 **(II) A PERSON WHO IS CONVICTED OF A THIRD OR**
21 **SUBSEQUENT VIOLATION OF THIS SECTION OCCURRING WITHIN 2 YEARS AFTER**
22 **THE PRECEDING VIOLATION IS SUBJECT TO A FINE NOT EXCEEDING \$20,000.**

23 **(D) FOR THE PURPOSES OF THIS SECTION, EACH SEPARATE DATE ON**
24 **WHICH A SAMPLE OR COUPON IS DISTRIBUTED IS A VIOLATION.**

25 **10-140.**

26 **(A) A PERSON UNDER THE AGE OF 18 YEARS MAY NOT POSSESS AN**
27 **ENERGY DRINK.**

28 **(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION SHALL**
29 **BE ISSUED A CITATION UNDER THIS SECTION.**

30 **(C) A CITATION FOR A VIOLATION OF SUBSECTION (A) OF THIS SECTION**
31 **MAY BE ISSUED BY:**

1 (1) A POLICE OFFICER AUTHORIZED TO MAKE ARRESTS; AND

2 (2) IN STATE FORESTRY RESERVATIONS, STATE PARKS, HISTORIC
3 MONUMENTS, AND RECREATION AREAS, A FOREST OR PARK WARDEN UNDER §
4 5-206(A) OF THE NATURAL RESOURCES ARTICLE.

5 (D) A PERSON AUTHORIZED UNDER THIS SECTION TO ISSUE A CITATION
6 SHALL ISSUE THE CITATION IF THE PERSON HAS PROBABLE CAUSE TO BELIEVE
7 THAT THE PERSON CHARGED IS COMMITTING OR HAS COMMITTED A VIOLATION
8 OF SUBSECTION (A) OF THIS SECTION.

9 (E) THE FORM OF CITATION ISSUED SHALL:

10 (1) BE PRESCRIBED BY THE STATE COURT ADMINISTRATOR;

11 (2) BE UNIFORM THROUGHOUT THE STATE; AND

12 (3) CONTAIN THE INFORMATION LISTED IN § 3-8A-33(B) OF THE
13 COURTS ARTICLE.

14 (F) (1) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE
15 CITATION AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE
16 DISTRICT HAVING VENUE.

17 (2) THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE
18 CASE FOR TRIAL AND SUMMON THE DEFENDANT TO APPEAR.

19 (3) WILLFUL FAILURE OF THE DEFENDANT TO RESPOND TO A
20 SUMMONS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION IS CONTEMPT
21 OF COURT.

22 (G) (1) FOR PURPOSES OF THIS SECTION, A VIOLATION OF
23 SUBSECTION (A) OF THIS SECTION IS A CODE VIOLATION AND IS A CIVIL
24 OFFENSE.

25 (2) A PERSON CHARGED WITH A VIOLATION OF SUBSECTION (A)
26 OF THIS SECTION SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS
27 PROVIDED IN TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

28 (3) ADJUDICATION OF A CODE VIOLATION UNDER SUBSECTION
29 (A) OF THIS SECTION IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE AND
30 DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED BY A
31 CRIMINAL CONVICTION.

1 **(H) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER SUBSECTION**
2 **(A) OF THIS SECTION:**

3 **(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE**
4 **DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF**
5 **CRIMINAL CAUSES;**

6 **(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS**
7 **PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF CRIMINAL CAUSES;**

8 **(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS**
9 **RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE**
10 **DEFENDANT UNDERSTANDS THOSE CHARGES;**

11 **(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL**
12 **WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR**
13 **WITNESSES ON BEHALF OF THE DEFENDANT, OR TO TESTIFY ON THE**
14 **DEFENDANT'S OWN BEHALF IF THE DEFENDANT CHOOSES TO DO SO;**

15 **(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY**
16 **COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE**
17 **DEFENDANT; AND**

18 **(6) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT**
19 **GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:**

20 **(I) GUILTY OF A CODE VIOLATION;**

21 **(II) NOT GUILTY OF A CODE VIOLATION; OR**

22 **(III) PROBATION BEFORE JUDGMENT, IMPOSED BY THE**
23 **COURT IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW**
24 **IN THE TRIAL OF A CRIMINAL CASE.**

25 **(i) (1) IF THE DISTRICT COURT FINDS THAT A PERSON HAS**
26 **COMMITTED A CODE VIOLATION, THE COURT SHALL REQUIRE THE PERSON TO**
27 **PAY:**

28 **(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$50;**
29 **OR**

1 **(II) FOR A SECOND OR SUBSEQUENT VIOLATION, A FINE NOT**
2 **EXCEEDING \$100.**

3 **(2) THE CHIEF JUDGE OF THE DISTRICT COURT MAY NOT**
4 **ESTABLISH A SCHEDULE FOR THE PREPAYMENT OF FINES FOR A VIOLATION OF**
5 **SUBSECTION (A) OF THIS SECTION.**

6 **(J) WHEN A DEFENDANT HAS BEEN FOUND GUILTY OF A CODE**
7 **VIOLATION AND A FINE HAS BEEN IMPOSED BY THE COURT:**

8 **(1) THE COURT MAY DIRECT THAT THE PAYMENT OF THE FINE BE**
9 **SUSPENDED OR DEFERRED UNDER CONDITIONS THAT THE COURT MAY**
10 **ESTABLISH; AND**

11 **(2) IF THE DEFENDANT WILLFULLY FAILS TO PAY THE FINE**
12 **IMPOSED BY THE COURT, THAT WILLFUL FAILURE MAY BE TREATED AS A**
13 **CRIMINAL CONTEMPT OF COURT FOR WHICH THE DEFENDANT MAY BE**
14 **PUNISHED BY THE COURT AS PROVIDED BY LAW.**

15 **(K) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE**
16 **PROCEEDINGS IN THE DISTRICT COURT AND FOR PAYMENT TO THE CRIMINAL**
17 **INJURIES COMPENSATION FUND.**

18 **(2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER**
19 **SUBSECTION (A) OF THIS SECTION IN WHICH COSTS ARE IMPOSED ARE \$5.**

20 **(L) (1) A DEFENDANT WHO HAS BEEN FOUND GUILTY OF A CODE**
21 **VIOLATION UNDER SUBSECTION (A) OF THIS SECTION HAS THE RIGHT TO**
22 **APPEAL OR TO FILE A MOTION FOR A NEW TRIAL OR A MOTION FOR A REVISION**
23 **OF A JUDGMENT PROVIDED BY LAW IN THE TRIAL OF A CRIMINAL CASE.**

24 **(2) A MOTION SHALL BE MADE IN THE SAME MANNER AS**
25 **PROVIDED IN THE TRIAL OF CRIMINAL CASES, AND THE COURT, IN RULING ON**
26 **THE MOTION, HAS THE SAME AUTHORITY AS PROVIDED IN THE TRIAL OF**
27 **CRIMINAL CASES.**

28 **(M) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A**
29 **CODE VIOLATION UNDER SUBSECTION (A) OF THIS SECTION IN THE SAME**
30 **MANNER AS PROSECUTION OF A VIOLATION OF THE CRIMINAL LAWS OF THE**
31 **STATE.**

32 **(2) IN A CODE VIOLATION CASE UNDER SUBSECTION (A) OF THIS**
33 **SECTION, THE STATE'S ATTORNEY MAY:**

1 **(I) ENTER A NOLLE PROSEQUI IN OR PLACE THE CASE ON**
2 **THE STET DOCKET; AND**

3 **(II) EXERCISE AUTHORITY IN THE SAME MANNER AS**
4 **PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2014.