

HOUSE BILL REPORT

HB 2804

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to beer and caffeinated or stimulant-enhanced malt beverages.

Brief Description: Concerning beer and caffeinated or stimulant-enhanced malt beverages.

Sponsors: Representatives Green, Hudgins, Goodman, Conway, Chandler, Crouse, Condotta, Moeller, Miloscia, Darneille, Hunt, Kagi and McCune; by request of Liquor Control Board.

Brief History:

Committee Activity:

Commerce & Labor: 1/20/10, 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Requires caffeinated or stimulant-enhanced malt beverages to be labeled with the amount of caffeine or other stimulants, the alcohol content, and other information.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Joan Elgee (786-7106).

Background:

Several liquor licenses permit the sale of beer. "Beer" is any "malt beverage" and "malt beverage" is a beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than 8 percent alcohol by weight and not less than 0.5

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percent of alcohol by volume. Malt beverages containing more than 8 percent alcohol by weight are referred to as "strong beer."

In September 2009 a number of state Attorneys General sent a letter to the Food and Drug Administration (FDA) expressing concerns about caffeinated alcoholic beverages. In November, the FDA notified approximately 30 manufacturers of caffeinated alcoholic beverages that it intended to look into the safety and legality of their products. Under the Federal Food, Drug, and Cosmetic Act, a substance added to food is deemed "unsafe" and is unlawful unless its particular use has been approved by FDA regulation, the substance is subject to a prior sanction, or the substance is generally recognized as safe.

Summary of Substitute Bill:

Persons manufacturing or distributing caffeinated or stimulant-enhanced malt beverages for sale within the state must label the packages stating the amount of caffeine and/or other stimulants, the amount of alcohol, the name of the manufacturer, and the place of manufacturer. A "caffeinated or stimulant-enhanced malt beverage" is a beverage to which is added caffeine or other stimulants including guarana, ginseng, and taurine, and contains at least 6 percent alcohol by volume.

Substitute Bill Compared to Original Bill:

The substitute bill changes a ban on caffeinated or stimulant-enhanced malt beverages to a labeling requirement and modifies the definition to refer to such beverages containing at least 6 percent alcohol. The substitute bill also makes clarifying changes to specify that caffeinated or stimulant-enhanced malt beverages are "beer" for the purposes of the liquor code and are "malt" beverages.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Young people plus excessive amounts of alcohol plus intense energy drinks is a deadly combination. Drinking alcohol with stimulants can make you feel less drunk, but you are very drunk. Alcohol is a depressant, but these other ingredients are stimulants. It is like taking two prescription drugs that are dangerous in combination. These beverages are typically sold in 20-ounce cans with a high alcohol content. One product is 23 ounces and 12 percent alcohol. One can is equivalent to drinking four or five shots of hard liquor and some have the caffeine equivalent of 20 or 30 cups of coffee. A test in Miami showed that three of

the smaller cans were equivalent to five shots of whisky and 16 cans of Pepsi. Alcohol kills more people than all other drugs combined. Nonalcoholic drinks must show how much stimulant is in them.

Being wide-awake and drunk leads to bad decisions, such as violence and drunk driving. These drinks are dangerous for college students and increase the likelihood of such things as binge drinking and unintended pregnancy. These drinks are designed to appeal to youth, who are already risk-takers. The marketing tools on their websites will surprise you. The slogans include "Sleep when you are dead," and "Sleep when you are 30."

Two large manufacturers have voluntarily removed the products from the market. Montana moved these products to state liquor stores and has not sold any. California taxes the products at the same level as spirits and also has a bill to ban the products. Washington should not wait for the FDA. It is one day past the FDA deadline and it is not known how long the process will take.

The Liquor Control Board is not the moral police. It is okay to have a Red Bull and vodka. The stimulant malt beverages cost \$2.49 as compared to a mixed drink in a bar which costs \$4 to \$5. Most stores sell the non-alcoholic version for more than the alcoholic version. These drinks look like regular energy drinks and are really dangerous to kids. A 19-year-old driver pulled over and called 911. She had been drinking what she thought were energy drinks and was very loaded. A bus driver cannot tell if kids have alcoholic or nonalcoholic energy drinks. A small store did not know the difference between the alcoholic and non-alcoholic drinks. Several stores have the alcoholic version in the cooler next to the Gatorade and milk.

(With concerns) The definition is of concern. Taurine and ginseng are not stimulants as defined by the FDA and it is inconclusive whether they have stimulant properties.

(Opposed) The FDA process is underway to determine what requirements, if any, are necessary and the Legislature should wait until the FDA completes its analysis. Washington is the first and only state to attempt to ban these beverages. A company complies with all state and federal laws and does not market to minors. The ingredients are approved by the Alcohol and Tobacco Tax and Trade Bureau and state agencies. Some companies generated a firestorm and made other companies guilty by association. It is an unprecedented step to ban these beverages. The bill will have a detrimental impact on businesses. It is arbitrary and unfair to single out malt beverages. What about rum and Coke or whiskey and coffee?

A ban is not the appropriate approach. The issue is marketing and advertising. Tacoma-area distributors voluntarily asked the Liquor Control Board to ban these beverages in an Alcohol Impact Area.

Persons Testifying: (In support) Representative Green, prime sponsor; Sharon Foster, Washington State Liquor Control Board; Jim Cooper, Washington Association for Substance Abuse and Violence Prevention; and David Dickinson, Department of Social and Health Services.

(With concerns) Jeff Gombosky, Anheuser Busch.

(Opposed) Jim Halstrom, Jaisen Freeman, and Jeff Wright, Phusion Projects; and John Guadnola, Washington Beer and Wine Wholesalers.

Persons Signed In To Testify But Not Testifying: None.