COMMITTEE REPORT

February 2, 2011

**H. 3246**

Introduced by Reps. Funderburk, Viers, Agnew and Gambrell

S. Printed 2/2/11--H.

Read the first time January 11, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3246) to amend the Code of Laws of South Carolina, 1976, by adding Section 61‑4‑280 so as to prohibit the importation, production, manufacture, distribution, or sale, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 61‑4‑280(B), as contained in SECTION 1, beginning on line 28, pages 1‑2, by deleting subsection (B) in its entirety and inserting:

/ (B) For purposes of this section, ‘alcoholic energy drink’ and ‘caffeinated malt beverage’ mean a prepackaged alcoholic or malt beverage in which caffeine or other stimulants including, but not limited to, guarana, ginseng, and taurine have been intentionally added as a food additive to the beverage. For purposes of this section, the term ‘food additive’ has the same meaning as defined in Section 201(s) of the Federal Food, Drug, and Cosmetic Act. This section does not apply to alcoholic or malt beverages made with ingredients that contain naturally occurring caffeine, including but not limited to, coffee, cola, tea, cacao, or extracts derived from these foods. /

Amend the bill further, by deleting Section 61‑4‑280(C) in its entirety, as contained in Section 1, page 2, lines 6‑14 and inserting:

/ (C) A person or entity identified in subsection (A) who violates a provision of this section or a rule or regulation promulgated by the department or the division under this section, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned for not less than thirty days nor more than six months, or both, in the discretion of the court. In addition to the punishment specified in this section, a person must forfeit his permit and is not authorized, for a period of two years after conviction, to engage in a business taxable under the provisions of this chapter. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61‑4‑280 SO AS TO PROHIBIT THE IMPORTATION, PRODUCTION, MANUFACTURE, DISTRIBUTION, OR SALE OF ALCOHOLIC ENERGY DRINKS AND CAFFEINATED MALT BEVERAGES AND TO PROVIDE PENALTIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 4, Title 61 of the 1976 Code is amended by adding:

“Section 61‑4‑280. (A) A producer, manufacturer, wholesaler, retailer, licensee, person, firm, corporation, or association may not import, produce, manufacture, distribute, sell, or offer for sale alcoholic energy drinks or caffeinated malt beverages in this State.

(B) For purposes of this section, ‘alcoholic energy drink’ and ‘caffeinated malt beverage’ mean a beverage for which the producer is required to file a formula for approval with the United States Alcohol and Tobacco Trade and Tax Bureau pursuant to Section 25.55 of Title 27 of the Code of Federal Regulations, that is not exempt under subdivision (f) of that code, and is either of the following:

(1) a beverage containing at least 0.5 percent alcohol by volume that is produced by a brewer, as defined in Section 5092 of Title 26 of the United States Code, to which is added or infused caffeine or other stimulants, alone or in combination, including, but not limited to, guarana, ginseng, and taurine; or

(2) a beverage containing at least 0.5 percent alcohol by volume that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer, as described in Section 25.55 of Title 27 of the Code of Federal Regulations, to which is added a flavor or other ingredient containing alcohol, except for a hop extract, and caffeine or other stimulants, alone or in combination, including, but not limited to, guarana, ginseng, and taurine.

(C) A person who violates a provision of this section or a rule or regulation promulgated by the department or the division under this section, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, in the discretion of the court. In addition to the punishment specified in this section, the person must forfeit his permit and is not, for a period of two years thereafter, authorized to engage in a business taxable under the provisions of this chapter.

(D) The department may promulgate rules and regulations to effectuate the purposes of this section.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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