

House File 432 - Introduced

HOUSE FILE 432

BY FISHER and FORBES

A BILL FOR

1 An Act prohibiting the underage sale, consumption, or
2 possession of energy drinks, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 127.1 Definitions.

2 For purposes of this chapter, unless the context otherwise
3 requires:

4 1. "Employee" means any employee, contract employee, or
5 agent of a retailer.

6 2. "Energy drink" means a beverage that exceeds a caffeine
7 or other methylxanthine content of ten milligrams per ounce and
8 is classified as a dietary supplement by the federal food and
9 drug administration.

10 3. "Retailer" means a person or business entity engaged in
11 this state in the business of selling energy drinks on a retail
12 basis.

13 Sec. 2. NEW SECTION. 127.2 Energy drinks — persons under
14 legal age.

15 1. A person shall not sell, give, or otherwise supply an
16 energy drink to any person under eighteen years of age.

17 2. A person under eighteen years of age shall not consume or
18 possess with the intent to consume an energy drink.

19 3. Possession of an energy drink by an individual under
20 eighteen years of age does not constitute a violation under
21 this section if the individual under eighteen years of
22 age possesses the energy drink as part of the individual's
23 employment and the individual is employed by a person who
24 offers for sale or sells energy drinks.

25 4. a. A person shall not be guilty of a violation of this
26 section if conduct that would otherwise constitute a violation
27 is performed to assess compliance with this section if any of
28 the following applies:

29 (1) The compliance effort is conducted by or under the
30 supervision of law enforcement officers.

31 (2) The compliance effort is conducted with the advance
32 knowledge of law enforcement officers and reasonable measures
33 are adopted by those conducting the effort to ensure that
34 consumption of energy drinks by individuals under eighteen
35 years of age does not result from participation by any

1 individual under eighteen years of age in the compliance
2 effort.

3 *b.* For the purposes of this subsection, "*law enforcement*
4 *officer*" means a peace officer as defined in section 801.4 and
5 includes persons designated under section 127.3, subsection 5
6 to enforce this section.

7 Sec. 3. NEW SECTION. **127.3 Penalties.**

8 1. A person, other than a retailer or employee of a
9 retailer, who violates section 127.2, subsection 1, commits a
10 simple misdemeanor.

11 2. An employee of a retailer who violates section 127.2,
12 subsection 1, commits a simple misdemeanor punishable as a
13 scheduled violation under section 805.8C, subsection 10,
14 paragraph "*a*".

15 3. A retailer who violates section 127.2, subsection 1, or
16 a retailer whose employee violates section 127.2, subsection 1,
17 shall be assessed a civil penalty upon hearing and notice as
18 provided in subsection 5 as follows:

19 *a.* If the violation is a first offense, the retailer shall
20 be assessed a civil penalty in the amount of three hundred
21 dollars.

22 *b.* If the violation is a second offense, the retailer shall
23 be assessed a civil penalty in the amount of one thousand five
24 hundred dollars.

25 *c.* If the violation is a third offense, the retailer shall
26 be assessed a civil penalty in the amount of one thousand five
27 hundred dollars and may be prohibited from selling energy
28 drinks for a period of up to thirty days.

29 *d.* If the violation is a fourth offense, the retailer shall
30 be assessed a civil penalty in the amount of one thousand five
31 hundred dollars and may be prohibited from selling energy
32 drinks for a period of up to sixty days.

33 *e.* If the violation is a fifth or subsequent offense, the
34 retailer shall be assessed a civil penalty in the amount of
35 one thousand five hundred dollars and shall be prohibited from

1 selling energy drinks for a period of three years from the date
2 of the assessment of the civil penalty.

3 4. A person who violates section 127.2, subsection 2, is
4 subject to the following, as applicable:

5 a. A civil penalty pursuant to section 805.8C, subsection
6 10, paragraph "b". Notwithstanding section 602.8106 or
7 any other provision to the contrary, any civil penalty paid
8 under this subsection shall be retained by the city or county
9 enforcing the violation.

10 b. If the violation is a first offense, performance of eight
11 hours of community work requirements, unless waived by the
12 court.

13 c. If the violation is a second offense, performance of
14 twelve hours of community work requirements.

15 d. If the violation is a third or subsequent offense,
16 performance of sixteen hours of community work requirements.

17 5. A city or a county may enforce this section. In the
18 event of a violation of subsection 3, a retailer shall be
19 provided an opportunity to be heard upon ten days' written
20 notice by restricted certified mail stating the alleged
21 violation and the time and place at which the retailer may
22 appear and be heard. A city or county taking legal action
23 under this section shall report violations and penalties
24 imposed to the department of public safety within thirty days
25 of the penalty being assessed. A civil penalty assessed
26 against a retailer shall be collected by the clerk of the
27 district court and shall be distributed as provided in section
28 602.8105, subsection 4.

29 **Sec. 4. NEW SECTION. 127.4 Seizure of false or altered**
30 **driver's license or nonoperator's identification card.**

31 If a retailer or an employee of a retailer has a reasonable
32 belief based on factual evidence that a driver's license as
33 defined in section 321.1, subsection 20A, or nonoperator's
34 identification card issued pursuant to section 321.190 offered
35 by a person who wishes to purchase an energy drink is altered

1 or falsified or belongs to another person, the retailer or
2 employee may retain the driver's license or nonoperator's
3 identification card. The provisions of section 453A.4 with
4 regard to the procedures used by permittees under chapter 453A,
5 or employees thereof, for the retention and reporting of false
6 or altered driver's licenses or nonoperator's identification
7 cards shall apply to the retention of a driver's license or
8 nonoperator's identification card pursuant to this section.

9 Sec. 5. Section 602.8105, subsection 4, Code 2013, is
10 amended to read as follows:

11 4. The clerk of the district court shall collect a civil
12 penalty assessed against a retailer pursuant to section 126.23B
13 or section 127.3. Any moneys collected from the civil penalty
14 shall be distributed to the city or county that brought the
15 enforcement action for a violation of section 126.23A or
16 section 127.2.

17 Sec. 6. Section 805.8C, Code 2013, is amended by adding the
18 following new subsection:

19 NEW SUBSECTION. 10. *Energy drink violations.*

20 a. For violations of section 127.2, subsection 1, by an
21 employee of a retailer, the scheduled fine is as follows:

22 (1) If the violation is a first offense, the scheduled fine
23 is one hundred dollars.

24 (2) If the violation is a second offense, the scheduled fine
25 is two hundred fifty dollars.

26 (3) If the violation is a third or subsequent offense, the
27 scheduled fine is five hundred dollars.

28 b. For violations of section 127.2, subsection 2, the
29 scheduled fine is as follows and is a civil penalty, and the
30 criminal penalty surcharge under section 911.1 shall not be
31 added to the penalty, and the court costs pursuant to section
32 805.9, subsection 6, shall not be imposed:

33 (1) If the violation is a first offense, the scheduled fine
34 is fifty dollars.

35 (2) If the violation is a second offense, the scheduled fine

1 is one hundred dollars.

2 (3) If the violation is a third or subsequent offense, the
3 scheduled fine is two hundred fifty dollars.

4

EXPLANATION

5 This bill prohibits the sale to, or consumption or
6 possession of energy drinks by, persons under 18 years of
7 age. The bill defines an "energy drink" to mean a beverage
8 that exceeds a caffeine or other methylxanthine content of
9 10 milligrams per ounce and that is classified as a dietary
10 supplement by the federal food and drug administration.

11 The bill provides that a person shall not sell, give,
12 or otherwise supply an energy drink to any person under 18
13 years of age, and that a person under 18 years of age shall
14 not consume or possess with the intent to consume an energy
15 drink. The bill states that possession of an energy drink
16 by an individual under 18 years of age does not constitute
17 a violation if the individual under eighteen years of age
18 possesses the energy drink pursuant to their employment and
19 the individual is employed by a person who offers for sale or
20 sells energy drinks. The bill provides that a person shall
21 not be guilty of a violation if conduct that would otherwise
22 constitute a violation is performed to assess compliance with
23 the bill's provisions.

24 The bill provides that if a person other than a retailer
25 or employee of a retailer sells, gives, or supplies an energy
26 drink to a person under 18, the person is guilty of a simple
27 misdemeanor. A simple misdemeanor is punishable by confinement
28 for no more than 30 days or a fine of at least \$65 but not more
29 than \$625 or by both. The bill provides that such actions
30 by an employee of a retailer constitute a simple misdemeanor
31 punishable by a scheduled fine of \$100 for a first offense,
32 \$250 for a second offense, and \$500 for a third or subsequent
33 offense. The bill provides that a retailer who engages in such
34 actions, or whose employee engages in such actions, shall be
35 subject to a civil penalty of \$300 for a first offense, \$1,500

1 for a second offense, \$1,500 and a prohibition from selling
2 energy drinks for up to 30 days for a third offense, \$1,500
3 and a prohibition from selling energy drinks for up to 60 days
4 for a fourth offense, and \$1,500 and a mandatory prohibition
5 from selling energy drinks for three years following the date
6 of assessment of the civil penalty for a fifth or subsequent
7 offense.

8 The bill provides that if a person under 18 years of age
9 possesses or consumes an energy drink, they are subject to a
10 scheduled violation civil penalty of \$50 for a first offense,
11 \$100 for a second offense, and \$250 for a third or subsequent
12 offense. The person shall also be subject to eight hours of
13 community work requirements unless waived by the court for a
14 first offense, 12 hours for a second offense, and 16 hours for
15 a third or subsequent offense.

16 The bill authorizes a city or county to enforce the bill's
17 provisions, and directs a city or county to report violations
18 and penalties to the department of public safety within 30 days
19 of the penalty being assessed. With regard to violations by
20 a retailer or a retailer whose employee commits a violation,
21 the bill specifies that the retailer shall be provided an
22 opportunity to be heard upon 10 days' written notice by
23 restricted certified mail stating the alleged violation and the
24 time and place at which the retailer may appear and be heard.
25 The bill specifies that civil penalties assessed against a
26 retailer shall be collected by the clerk of the district
27 court and distributed to the city or county that brought the
28 enforcement action.

29 Additionally, the bill specifies procedures for the
30 retention of a driver's license or nonoperator's identification
31 card by a retailer or an employee of a retailer if they have a
32 reasonable belief based on factual evidence that the license or
33 card offered by a person who wishes to purchase an energy drink
34 is altered or falsified or belongs to another person.