

# MARIN INSTITUTE

## MODEL STATUTE

### FOR PROHIBITING MALT BEVERAGES WITH STIMULANTS

STATUTE No. \_\_\_\_\_

#### SECTION 1: PURPOSE

The primary purpose of this statute is to promote the health and safety of the public by restricting the sale and distribution of premixed malt beverages containing stimulants, such as caffeine, in the State of [name of State].

#### Commentary to Section 1:

*Section 1 establishes the primary purpose of the statute, the promotion of the “health and safety of the public.” Providing the purpose of the law may assist a court or agency with ascertaining the legislative intent when applying or interpreting the law. All findings as described below in Section 2 should support the above purpose.*

#### SECTION 2: FINDINGS

The governing body of [name of State], after completing a legally noticed public hearing, finds the following:

- (a) WHEREAS, the 21<sup>st</sup> Amendment of the United States Constitution grants States the authority to regulate the sale and distribution of alcoholic beverages within its borders.
- (b) WHEREAS, alcohol is a leading cause of death and injury, from impaired driving to violence, sexual assault, and suicide, and contributes to family and community disruption, and poor school performance, among other social problems.
- (c) WHEREAS, combining alcohol with caffeine and other stimulants does not ameliorate the alcohol’s negative effects on one’s motor coordination and visual reaction times.
- (d) WHEREAS, adding caffeine and other stimulants to alcohol is potentially harmful because such additives may impair one’s ability to judge his or her own intoxication as well as the ability to judge intoxication in someone else. This may result in increased alcohol consumption and can lead drinkers to wrongly conclude that they are capable of engaging in risky and potentially dangerous activities, such as operating a motor vehicle or engaging in risky sex.
- (e) WHEREAS, young people are particularly vulnerable to increased problems associated with the use of these products as they are more likely to misjudge their own intoxication and more likely to take risks than adults and to suffer high rates of alcohol problems, including alcohol-related traffic accidents, violence, sexual assault and suicide.

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- (f) WHEREAS, the marketing of malt beverage products containing caffeine and other stimulants associates the products with nonalcoholic energy drinks and other soft drinks through the use of containers with similar sizes, shapes, and graphics to nonalcoholic drinks. These similarities create the potential for confusion among adult and youth consumers, retailers, parents, law enforcement officers, and others regarding which products contain alcohol.
- (g) WHEREAS, the marketing of malt beverage products containing caffeine and other stimulants appears to be directed primarily at young people through the use of non-traditional marketing campaigns, including interacting with consumers through social networking websites (e.g., MySpace and Facebook) and product giveaways (e.g., at spring break and extreme sporting events).
- (h) WHEREAS, the combination of stimulants and depressants may place undue strain on the heart and central nervous system.
- (i) WHEREAS, the overuse of caffeine can result in acute overdoses that can cause health problems including anxiety, heart palpitation, mania, depression, lapses of judgment, and in extreme cases death.
- (j) WHEREAS the marketing messages of malt beverage products containing caffeine and other stimulants imply that they have energizing effects and fail to disclose to consumers the adverse effects and consequences associated with their consumption.

## Commentary to Section 2:

*The Findings section establishes the basis upon which the bill is predicated. Each finding should provide evidence supporting the bill's purpose and establishing the necessity of the legislation. The Findings section may be useful for a court or agency ascertaining the legislative intent when applying or interpreting the law. When the statute is codified in the state's code the findings may be excluded.*

## **NOW THEREFORE:**

**BE IT ORDAINED BY THE LEGISLATURE OF THE STATE of \_\_\_\_\_:**

## **SECTION 3: DEFINITION**

"Caffeinated Malt Beverage" means:

- (a) A beverage:
  - (1) containing at least .5% alcohol by volume;
  - (2) produced by a brewer as defined in 26 U.S.C. § 5092;
  - (3) to which is added, or infused with, caffeine and/or other stimulants including, but not limited to, guarana, ginseng and taurine; OR
- (a) A beverage:
  - (1) containing at least .5% alcohol by volume;
  - (2) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in C.F.R. Sec. 25.55;

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- (3) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- (4) to which is added caffeine and/or other stimulants including, but not limited to, guarana, ginseng and taurine; AND
- (5) EITHER 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 27 C.F.R. Sec. 25.55; OR that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

### Commentary to Section 3:

*Section 3 establishes the scope of the Model Law by providing a definition of the products subject to its terms. The Model Law limits the scope to “Caffeinated Malt Beverages,” which is defined in two parts. The first applies to any beverage that combines alcohol and stimulants and is produced by brewers. This has the effect of applying to all brewers, and is similar to the agreement reached by Anheuser-Busch, Inc. with State Attorneys General to cease and desist the production of any product that contains both alcohol and stimulants. The second part applies to all alcopops (referred to as “Flavored Malt Beverages” in Federal regulations) regardless of who produces them. The definition is drawn from a recently-enacted law in Utah regarding alcopop taxation, labeling and availability (Utah Code: Title 32A, Chapter 1, Part 8, Malted Beverages Act). This insures that the ban includes alcopops regardless of who produces them.*

*The Model Act does not include beverages that combine stimulants with wine or distilled spirits (unless produced by brewers) and does not address the mixing of energy drinks and alcoholic beverages in on-sale establishments. While the mixing of alcohol and caffeine in all forms is dangerous, alcopops and beverages produced by brewers (such as Sparks, produced by Miller Brewing Company) represent the most immediate threat to public health because of their wide availability, packaging, and appeal to underage persons. States or local jurisdictions may wish to modify or expand the types of beverages that are included in the ban. If this is the case, attention should be given to whether products on the market that might be characterized as “traditional” beverages because they have been marketed for years (e.g. Kahlua, Irish Coffee) should be exempted.*

## **SALE OF CAFFEINATED MALT BEVERAGES**

No Caffeinated Malt Beverages may be imported, produced, manufactured, distributed, or sold at any retail outlet in the state.

### Commentary to Section 4:

*Section 4 prohibits the sale, distribution, manufacture, production, or importation of Caffeinated Malt Beverages. Prohibiting all such activities permits enforcement at any level of the distribution chain. The exact language in subsection 1 will need to be tailored to reflect the relevant statutory definitions found in each state.*

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## SECTION 5: ADMINISTRATION AND ENFORCEMENT

The [name of the agency or agencies charged with administering and enforcing the state's alcohol laws] shall administer and enforce the provisions of this statute and shall promulgate regulations as necessary to insure effective administration and enforcement.

### Commentary to Section 5:

*Section 5 specifically delegates the administrative and enforcement responsibilities of this statute to the state agency or agencies which currently oversee the state's alcohol laws. This Section may not be required. Most states already have agencies charged with these duties and have existing mechanisms in place that can be relied upon, and existing laws may be sufficient to insure that appropriate delegation occurs. If these tasks are handled at the local level, then the language can be added that allows for such a delegation of duties.*

## SECTION 6: VIOLATIONS, PENALTIES, CIVIL ACTIONS

Any person or business entity that violates any provisions of this statute shall be guilty of an infraction and, upon a finding of such a violation by the [name of the agency charged with administering the state's alcohol laws] shall be subject to administrative assessment of civil penalties.

### Commentary to Section 6:

*Section 6 delegates the assessment of penalties to the state agency charged with administering the state's alcohol laws. As with Section 5, this Section may not be required or may need to be revised so that it references existing penalty provisions.*

## SECTION 7: APPEALS

Any licensee or person upon whom a penalty is imposed pursuant to Section 6 shall have the right to appeal the imposition of such penalty pursuant to the procedures established by [citation to section of state law or administrative code concerning appeals process for violations under the state's alcohol laws].

### Commentary to Section 7:

*Due process requires an administrative appeal procedure for both impositions of fines and/or penalties. As with Sections 5 and 6, most States have existing mechanisms that address appeals procedures which should be referenced.*

## SECTION 8: STRICTER LOCAL REGULATION PERMITTED

This statute does not prohibit local cities and counties from enacting any regulation of the sale of alcoholic beverages containing stimulants or mixed with energy drinks that is more restrictive than those contained in the provisions of this statute. No city or county may permit the sale of beverages prohibited in Section 4.

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## Commentary to Section 8:

*Section 8 explicitly recognizes the authority of local governments to enact stricter regulations than those contained in the Model Statute. Since the statute bans the sale of all premixed Caffeinated Malt Beverages, the Section's practical effect is to allow localities to enact ordinances banning the mixing of alcohol with energy drinks if not included in Section 4. The Section also ensures clarity of the state's purpose by explicitly preempting local ordinances from weakening the bans.*

*In some states, localities are explicitly preempted by State law from enacting laws that would regulate any type of alcoholic beverage that may be sold by alcohol retailers. In these cases, this provision can either be omitted, maintaining the general grant of exclusive state authority, or a phrase may be advisable that states explicitly that the provision is a specific exception to the general state powers statute.*

## **SECTION 9: EFFECTIVE DATE**

The effective date of this statute shall be six months from the date of its enactment.

## Commentary to Section 9:

*The Effective Date is six months from the date of enactment. This time frame can be adjusted as needed depending on the particular circumstances in the state. This period allows retailers time to phase out the prohibited products which they may currently have in stock. If the statute also bans the serving of mixed Caffeinated Malt Beverages then the period also provides bars and restaurants time to train employees about the new law.*

## **DISCLAIMER**

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