



Center for the Study of Law and Enforcement Policy

A Center of the Pacific Institute for Research and Evaluation

BRIEFING PAPER

AB 417: A MARKETING ALCOHOL TO KIDS FORGIVENESS ACT

ISSUE SUMMARY

AB 417 redefines “beer” in California to include alcopops (also called malternatives or Flavored Alcoholic Beverages). These sweet, soda pop-style alcohol concoctions (such as Smirnoff Ice, Mike’s Hard Lemonade and Skyy Blue) are designed for the youth palate and are particularly popular with 14-18 year old girls. As a beer, alcopops are much more easily marketed to youth than distilled spirits, their appropriate classification under California law. Alcopop marketers, using their lobbying clout, pushed AB 417 through the California Legislature in the waning hours of 2005 legislative session. They avoided public scrutiny by “gutting and amending” an unrelated bill. The Legislature will be giving the marketers a \$40.5 million annual gift from the taxpayers unless Governor Schwarzenegger vetoes the bill.

AB 417 forgives past illegal alcopops marketing to young people.

According to the California Attorney General’s office and legal experts, alcopops should be classified under current law as distilled spirits because the alcohol they contain is derived from distilled alcohol. The marketers, however, have pretended that the products are beer, selling millions of gallons of the beverage over the last decade under false pretences. Now that the Attorney General has uncovered this deception, alcopop marketers are seeking legislative protection from enforcement of current law through AB 417. If enacted, the bill will reclassify alcopops as beer and the legislature will allow the marketers to continue marketing these products to California’s children.

The misclassification promotes marketing alcopops to young people.

By pretending alcopops are beer and not distilled spirits, the marketers make the products cheaper and more available, critical factors in marketing to young people. Beer has much lower taxes in California: 20 cents a gallon compared to \$3.30 a gallon for distilled spirits. Imposing the proper tax rate would raise the price substantially, thereby reducing alcopops’ appeal to young people. It would also put an end to the alcopop marketers’ tax dodge, which, according to the California Board of Equalization, costs California an estimated \$40.5 million in state taxes each year.

Lower taxes are just one benefit of the alcopops’ deception. By being misclassified as beer, they are available in approximately 35,000 additional retail outlets statewide, many of which are convenience stores typically located in residential neighborhoods where young people are more likely to be present. In addition, the beer misclassification allows alcopops marketers to escape network television’s ban on distilled spirits advertising. Distillers use alcopops as a means to get their brand names (such as Smirnoff Ice, Bacardi Silver, or Skyy Blue) on major television shows. Research demonstrates that

underage youth are more likely to be exposed to and familiar with this advertising than adults. This “branding” of distilled spirits names is working: distilled spirits are becoming increasingly popular with young people.

Alcopops are popular with young people, particularly 14-18 year old girls.

More than 16 percent of eighth-grade girls, 25 percent of 10th-grade girls and 33 percent of 12th-grade girls reported drinking alcopops, according to a study from the University of Michigan. This far exceeds adult consumption rates. The American Medical Association reports that underage girls consumed alcopops more than any other type of alcoholic beverage, while women 21 or older ranked these alcopops as their least consumed alcoholic beverage.

Underage drinking constitutes a public health crisis in California and the United States.

AB 417 supporters ignore the substantial danger alcopops pose to the health and safety of our state and country’s youth. Underage drinking leads to thousands of deaths and serious injuries in California each year. It is a leading cause of car crashes, sexual violence and problems at school and at home, resulting in an estimated cost to Californians of \$7.5 billion a year. Protecting our youth, not the narrow economic interests of the alcopops marketers, should be the legislature’s top priority in determining how best to regulate and tax these products, which have been demonstrated to have a special appeal among young people.

California should maintain its own classification of alcopops and not rely on federal policy.

Supporters argue that AB 417 is a technical bill designed to bring California law into conformity with federal regulatory policy. But the federal agency interpreting federal law expressly concluded that the states have the authority and responsibility to enforce its own laws regarding the classification of alcopops. California should maintain its own standards to protect its young people from harm.

The marketers and their allies are using a deceptive, back room maneuver called “gut and amend” to avoid public scrutiny of AB 417.

AB 417 was originally a bill to regulate beer tasting. It passed the Assembly and was on its second reading in the Senate when Assemblymembers Greg Aghazarian and Ed Chavez, the bill’s authors, “guttled and amended” it, transforming it into an alcopops marketing forgiveness act. Bills usually take months to be enacted, with multiple committee reviews and opportunities for public scrutiny and input. The amended AB 417, by contrast, was enacted in 2 ½ weeks. Most committees with jurisdiction were bypassed, and the two committees that did hold hearings announced them minutes before they occurred, shutting out most public input. The Assembly voted on the measure in the dead of night during their final day in session. The bill will become law unless it is vetoed by Governor Schwarzenegger.

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