



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

September 15, 2005

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

RE: Assembly Bill 417

Dear Governor  Schwarzenegger:

I write to respectfully request your veto of Assembly Bill 417. This measure proposes a significant change in existing law and has major negative implications with respect to teenage alcohol abuse.

Both before and since becoming Governor, you have demonstrated a commitment to protecting and fostering our children's welfare. The redefinition of "beer" in AB 417 charts a wrong public policy direction with respect to teen drinking and the availability to young people of alcoholic beverages known as flavored malt beverages (FMB), or "alcopops." A veto of this legislation would be consistent with your many efforts to promote the safety and welfare of young people, and is warranted for the following reasons.

FMBs are sweet-tasting, alcoholic drinks that mimic familiar non-alcoholic beverages like cola, lemonade, iced tea and fruit-flavored water. Many FMBs are "branded" in the name of a distiller (e.g., Smirnoff Ice, Bacardi Silver, Jack Daniel's Original Hard Cola) in the apparent hope that new drinkers will start with these sweet "branded" drinks and move to the distiller's brand of hard liquor when the drinkers mature.

Studies confirm that alcohol manufacturers direct much of the advertising for these products at underage persons. In 2003, young people 12-20 were exposed to 92% more advertising per capita for alcopops in magazines than adults 21 and over, according to data from the Center for Alcohol Marketing and Youth (CAMY). They were exposed to 72% more per capita in 2002, and 63% more in 2001, the CAMY data show.

Teenage girls are particularly at risk. In 2002, CAMY analyzed exposure to alcohol advertising in magazines by sex and found that girls 12-20 saw 95 percent more alcopops advertising per capita than women 21 and above. By comparison, boys saw 37 percent more alcopop ads than men of legal drinking age.

The industry's marketing strategy has been successful. Underage drinkers have developed a thirst for these sweet alcoholic drinks. A 2001 poll found that 51% of teens between the ages of 17-18 and 35% between 14-16 have tried FMBs, compared to less than a quarter of adults. The 2004 "Monitoring the Future" Study found that nearly one-third of high school seniors report regularly drinking FMBs. Finally, in December 2004, the American Medical Association released Teenage Drinking Survey Results, which found that about 33% of American teenage girls have tried FMBs and 82% of them believe these beverages taste better than beer and other alcoholic drinks.

It is well settled that sales of alcohol, tobacco and similar age-restricted products are price-sensitive. In other words, the higher the price, the less likely it is minors will buy the products. AB 417 strategically redefines the existing statutory definition of "beer." Current California law recognizes three types of alcoholic beverages for tax purposes, namely, distilled spirits, beer, and wine. The first two definitions are relevant here.

"Distilled spirits" are defined as "an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof." (Bus. & Prof. Code, § 23005.) "Beer" means "any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine." (Bus. & Prof. Code, § 23006.)

California's current definition of "beer" does not include any beverage that mixes beer with distilled spirits, while the definition of "distilled spirits" includes alcoholic beverages that contain any amount of distilled spirits or dilutions or mixtures thereof. FMBs mix beer with distilled spirits. Yet, AB 417 would define them as beer, unless the distilled spirits comprise more than 49 percent or more of their alcohol content. That is bad public policy. Defined and classified as beer, FMBs are subject to a substantially lower tax rate (\$0.20 per gallon, compared to \$3.30 per gallon for distilled spirits). The lower tax rate reduces the retail price, making it easier for young people to buy FMBs.

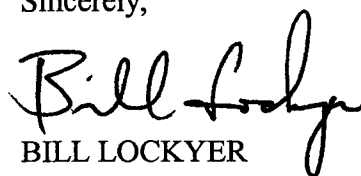
The Final Rule promulgated by the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) (70 Fed. Reg. 194, January 2005) contains the 49-percent rule also proposed by AB 417. However, it is critical to note that states are not required to follow federal law when setting and enforcing laws governing alcoholic beverages. Indeed, California law does not currently defer to federal law on the taxation or classification of alcoholic beverages.

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AB 417 makes no fiscal sense for California. Studies have shown underage drinking costs Californians up to \$7.5 billion every year through alcohol-related violence, vehicle accidents, high-risk sex, crimes, fetal injuries and other problems.

Given the significant change in existing law proposed by AB 417, and the wrong public policy direction it charts with respect to combating alcohol abuse, I respectfully request you to veto this measure.

Sincerely,

A handwritten signature in black ink that reads "Bill Lockyer". The signature is written in a cursive style with a large, looping "B" and a long, sweeping "y".

BILL LOCKYER
Attorney General