

Alcopops Update

Continued Work to Protect Nebraska Youths' Health & Safety

The application of the distilled spirits and beer definitions in the Nebraska Liquor Control Act, as they pertain to alcopops, has profound implications for the health and safety of Nebraska citizens. Alcopops, such as Mike's Hard Lemonade and Smirnoff Ice are popular with underage drinkers who are at high risk for alcohol problems.

Background

Alcopops are fruit-flavored, alcoholic drinks that have distilled spirits added. Alcopops come in colorful, youth-friendly packaging. The sweetness and flavoring mask the taste of alcohol, often mimicking non-alcoholic drinks like sodas. Alcopops are popular with underage drinkers, particularly young, female drinkers. From the look to the taste to the marketing, these tactics leave our youth particularly vulnerable.

On February 14, 2011, a Lancaster County District Court judge ruled that flavored alcoholic beverages, often referred to as alcopops, have been improperly classified as beer by the Nebraska Liquor Control Commission. The Honorable Judge John Colborn ordered alcopops be classified as distilled spirits and taxed as such in accordance with Nebraska state law.

Days after Judge Colborn's decision, Nebraska Attorney General Jon Bruning appealed the court's ruling. In August, the Nebraska Supreme Court accepted the case on appeal. The alcohol industry's Flavored Malt Beverage Coalition (led by Diageo) filed an amicus brief to join the Attorney General in his appeal. The Supreme Court heard oral arguments on November 3, 2011.

On January 5, 2012, Senator Russ Karpisek introduced Legislative Bill 824. The intent of the bill was to classify alcopops as beer, changing the law and ignoring the court process. A legislative hearing on LB 824 was held before the General Affairs Committee February 13, 2012 where nine alcohol industry lobbyists testified in support of the bill and only Project Extra Mile opposed the bill. The bill was prioritized by the General Affairs Committee on February 15, 2012.

In a landmark ruling, the Nebraska Supreme Court unanimously confirmed alcopops as distilled spirits on Friday, March 2, 2012. The following Monday, LB 824 was placed on the agenda to be debated by the Nebraska Legislature. On April 2, 2012, the Nebraska Legislature passed LB 824 with an Emergency Clause with a vote of 37-6-6. The bill was signed by Governor Heineman on April 6, 2012 and went into effect immediately, classifying alcopops as beer, and providing a multi-national industry preferential tax treatment.

The court rulings had the potential for profound positive effects for the health and safety of Nebraska citizens. The state's tax on spirits is \$3.75 per gallon compared to 31 cents per gallon for beer. Alcopops are marketed toward young people; an increase in price resulting from the tax change would act as a deterrent to youth access. Research has shown that higher prices on alcoholic beverages, including taxes are associated with lower levels of alcohol consumption and alcohol-related problems, especially in youth.^{1,2,3,4}

The February 2011 and March 2012 court rulings had the potential to reduce Nebraska young peoples' access to alcohol and generate more than \$2 million in tax revenue annually.

¹ Leung & Phelps (1993)

² Kenkel & Manning (1996)

³ Chaloupka, Grossman, & Saffer (1998)

⁴ Cook & Moore (2002)

Why the District and Supreme Court Rulings are Important

- Young people who begin drinking before age 15 are six times more likely to develop alcohol dependence and are two and a half times more likely to become abusers of alcohol than those who begin drinking at age 21.⁵
- Youth are more sensitive to changes in price than adults. Spirits are generally taxed at a significantly higher rate than beer. Higher taxation, in turn, raises retail price, which has been shown to reduce youth consumption of the product.⁶
- Availability of the product is also affected by its categorization, as spirits are included in another class of license and more tightly controlled, therefore may be available at fewer outlets and as a result, reducing youth access.
- The classification of alcopops as distilled spirits can generate approximately \$2 million in additional tax revenue each year for the State of Nebraska.
- How the product is classified determines the amount of excise tax that the producer must pay on the product. Spirits are typically taxed at a significantly higher rate than beer. In Nebraska, the excise tax rate for spirits is nearly 12 times that of beer.
- In 2014, alcohol-related motor vehicle crashes for teen drivers aged 16-20 cost Nebraska an estimated \$14.8 million when counting death, injury, and property damage.⁷
- Underage drinking cost the citizens of Nebraska \$324 million in 2013. These costs include medical care, work loss, and pain and suffering associated with multiple problems resulting from the use of alcohol by youth.⁸ This translates to a cost of \$1,779 for each youth in the state.
- Tax revenues created from the classification of alcopops as distilled spirits can be used to fund underage drinking prevention strategies, alcohol treatment programs, alcohol enforcement efforts, education, and many other initiatives focused on public health and safety.

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⁵ CDC (2016)

⁶ Mosher (2005)

⁷ Nebraska Office of Highway Safety (2015)

⁸ PIRE (2015)