

Alcopops in Nebraska: A Timeline



2003

March: The Alcohol and Tobacco Tax and Trade Bureau (TTB) issued its long-promised notice of rule change. The release summarized the TTB's analysis of the products: Of the 114 tested, 105 contained over 76% alcohol derived from distilled alcohol; 95% have less than 25% alcohol volume from fermentation.

October: The Nebraska Liquor Control Commission (LCC) distributed a letter to wholesalers to inform them effective January 1, 2004, the products would be classified as spirits.

November: Industry representatives attended the LCC hearings to request that the January deadline be delayed until July 1, 2004. Commissioners agreed to the industry's request.

2004

April: Senator Ray Janssen and several industry representatives attended the LCC public presentation to request that commissioners delay the implementation of classification of the products once again until the TTB made a decision. Senator Janssen later introduced an Interim Study Resolution (LR 370) to study the classification of the products.

December: The hearing for LR 370 was held and Project Extra Mile provided testimony asking that the products be classified as distilled spirits.

2005

January: The TTB made its final ruling regarding the products, adopting a rule that would allow up to 49% of the alcohol in the products to be derived from distilled spirits. LB 563 was introduced in the Nebraska Legislature. It would allow products to be defined as a beer if they derive not more than 49% of the total alcohol content from flavorings containing alcohol obtained by distillation.

February: A public hearing on LB 563 was held before the General Affairs Committee and Project Extra Mile provided testimony in opposition to the proposed bill. The bill advanced 7-0. LB 563 was later named the General Affairs Committee's priority bill. Senator Ernie Chambers added an amendment to the bill that would classify the products as spirits. LB 563 was placed on Select File.

March 14: Senator Chambers filed a motion to bracket the bill. A day later, he added an additional 20 amendments to the proposal. The proposal was carried over to the 2006 legislative session but was not adopted.

2006

July 20: The Attorney General released an opinion about the products at the request of Senator Ray Janssen. The opinion states the statute is ambiguous regarding classification and that the LCC has authority to classify the products. The LCC voted to classify the products as beer in Nebraska on July 31, 2006.

September – Present: Project Extra Mile collected over 900 resolutions of support across the state of Nebraska to urge the Commission to protect the health and safety of young people by properly classifying alcopops as distilled spirits. Fifty municipalities also adopted the resolution.

October: A lawsuit was announced at a news conference at the state capitol by Project Extra Mile and Mary Doghman. The suit was waged to address the LCC July 2006 decision.

2007

January: LB 251 failed to advance. The bill would have repealed 53-174 which prohibits alcohol from being added to beer. Testifying in opposition, Project Extra Mile believed the proposal to directly affect the classification of alcopops.

December: The Lancaster County District Court remanded the issue back to the LCC to commence rulemaking under Neb. Rev. Stat. 84-907, noting that the Commission failed to comply with rulemaking procedures under the Administrative Procedures Act with its July 2006 decision.

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2008

July 29: A youth-led news conference was held to urge the state to classify alcopops as distilled spirits.

July 31: The Commission held a public hearing at the Capitol on the proposed rule to classify alcopops as beer in Nebraska with nearly 100 people in attendance.

October: The Commission voted 3-0 to adopt the rule after receiving over 170 letters in opposition in the months prior to and following the hearing. There were just 12 proponents on record who supported the Commission's decision.

2009

June 29: Attorney General Jon Bruning signed the proposed rule after revisions to the language.

August 13: Governor Dave Heineman signed the rule after receiving it from the Attorney General's Office.

In late August, the Project Extra Mile Board of Directors voted unanimously to file a lawsuit in Lancaster County District Court challenging the Commission's classification of alcopops.

September: A second lawsuit is filed by Project Extra Mile, parent and taxpayer, Mary Doghman, and two new plaintiffs — Public Health Association of Nebraska and PRIDE. The lawsuit alleged that the LCC continues to violate Nebraska law by misclassifying alcopops as beer rather than distilled spirits.

2010

November 2: Lancaster County District Court Judge Gerald Otte recused himself from the case.

November 30: Oral arguments and the record presented before to Judge John Colborn.

2011

February 14: Judge Colborn finds in favor of the plaintiffs and declares that the Commission's rule to classify alcopops as beer "exceeded the statutory authority granted to the Commission under the Liquor Control Act." And further stated "As the law currently stands . . . FABs (alcopops) are clearly spirits under the Act and must be taxed as such."

February 22: Nebraska Attorney General Jon Bruning files appeal with the state Supreme Court.

August: The Nebraska Supreme Court accepted Attorney General Bruning's appeal of the District Court's ruling declaring alcopops as distilled spirits. The alcohol industry's Flavored Malt Beverage Coalition has filed an amicus brief to join the Attorney General in his appeal.