

**ORANGE COUNTY BOARD OF HEALTH
AGENDA ITEM SUMMARY**

Meeting Date: January 28, 2015

Agenda Item Subject: Alcopops Youth Presentation

Attachment(s): 1) NC Alcopops Executive Summary 2014.pdf and 2) Letter of Support

Staff or Board Member Reporting: Marianne Hark, *Program Director, Orange Partnership for Alcohol and Drug Free Youth*

Purpose: ___ Action
 ___ Information only
 __X_ Information with possible action

Summary Information:

Marianne Hark and local youth from Orange Partnership for Alcohol and Drug Free Youth will provide an overview of the current issues related to youth access to “Alcopops”, the general term for certain flavored alcoholic beverages. They will also discuss the key concerns related to the regulation and sales of these beverages, and what implications exist for youth alcohol consumption and local and statewide efforts to address AlcoPops in the retail environment.

Orange Partnership will ask for a letter of support (attached) from the BOH in these efforts.

Recommended Action: ___ Approve
 ___ Approve & forward to Board of Commissioners for action
 ___ Approve & forward to _____
 ___ Accept as information
 ___ Revise & schedule for future action
 __X_ Other (detail): Endorse the letter of support drafted by the Orange County Partnership and youth on Alcopops.

Regulation of Alcopops in North Carolina: Protecting Our Young People from Illegal Alcohol Marketing

What are Alcopops?

- Alcopops are sweet, flavored alcoholic drinks that contain distilled spirits and are popular with underage drinkers.
- In the United States alcopops are largely marketed as a malt beverage. They begin as a beer base but a substantial portion of the beer is stripped from the product eliminating its malt beverage characteristics including taste, color, carbonation, and much of the alcohol. The resulting liquid is then treated with additives, including flavorings that contain distilled spirits. The result is a unique product that contains spirits, flavorings and sugar-- resembling a soft drink more than a beer in taste and character.¹
- According to a study conducted by the Federal Alcohol and Tobacco Trade and Tax Bureau (TTB), 83% of the 114 alcopops tested contained less than 25% of the original beer and, for 92% of the brands tested, 75% or more of the alcohol was derived from added distilled alcohol.²

Underage Drinking and Alcopops

- Since introduction to the US market in the late 1990s, alcopops have surged in popularity due in large part to young people, particularly girls. In 2009, 5% of 8th graders, 19.0% of 10th graders, and 27.0% of 12th graders had consumed alcopops at least once in the past month, with rates for girls substantially higher.³
- Alcopops are more popular than beer among teenage girls even though alcopops constitute a mere 2% of the US “malt beverage” market.⁴⁵
- Those figures, though, underestimate the impact of alcopops as a transition beverage. Isolating those youth who report regular alcohol consumption (defined as at least 1 drinking episode in the past 30 days), almost two thirds (64%) of alcohol consuming 8th graders reported regular use of alcopops.⁶
- This is a drink marketed towards young people and that is reflected in sales. The use of alcopops among drinkers declines sharply with age. Less than one quarter of 29 to 30

¹ See Mosher, J. & Johnson, D. Flavored alcoholic beverages: An international marketing campaign that targets youth, *Journal of Public Health Policy* 26: pp. 326-342 (2005).

² Alcohol and Tobacco Tax and Trade Bureau. Flavored malt beverages and related proposals. *Federal Register*. 24 March 2003;68:14292–303. The TTB has since passed a regulation to require that 50% or more of the alcohol in the product must be derived from the malt process.

³ Johnston L, O’Malley P, Bachman J, Schulenberg J. *Monitoring the Future National Results on Adolescent Drug Use, 1975---2009. Volume 1: Secondary School Students*. Bethesda, MD: National Institute on Drug Abuse; 2010. NIH publication 09-7402.

⁴ Impact Databank. *Impact Databank Review and Forecast: The U.S. Spirits Market*. New York: M. Shanken Communications; 2009.

⁵ Johnston L, O’Malley P, Bachman J, Schulenberg J. *Monitoring the Future National Results on Adolescent Drug Use, 1975---2009. Volume 1: College Students and Adults Ages 19---50*. Bethesda, MD: National Institute on Drug Abuse; 2010. NIH publication 09-7403.

⁶ Johnston L, O’Malley P, Bachman J, Schulenberg J. *Monitoring the Future National Results on Adolescent Drug Use, 1975---2009. Volume 1: Secondary School Students*. Bethesda, MD: National Institute on Drug Abuse; 2010. NIH publication 09-7402.

year old drinkers report regular consumption of alcopops.⁷

How are Alcopops Currently Classified?

- The NC ABC Commission has classified alcopops as malt beverages for the purposes of sales and taxation. Their classification decision is based upon a 2005 ruling by the TTB.⁸ This classification ignores State law which defines any alcoholic beverage containing distilled spirits as a distilled spirit and not a beer.
- The classification is important. Beer is taxed at a much lower rate than distilled spirits and is sold at many more retail outlets than distilled spirits.

How States with Similar Laws Have Handled alcopops

- Attorneys General in California, Connecticut, Maine and Maryland have examined state laws in those states with very similar definitions as those found in North Carolina. They all concluded that alcopops are properly classified as spirits not malt beverages.⁹
- In a state with a very similar statutory definition for spirits and the same classification as in North Carolina a law suit was filed to properly classify alcopops. At the conclusion of the case, the Nebraska Supreme Court ruled that the Nebraska Liquor Control Commission had exceeded its statutory authority in classifying alcopops as malt beverages. The Court ruled that the proper classification for alcopops based on state law was as a distilled spirit.¹⁰

How Should Alcopops be Classified?

- As with the state laws referenced above, the North Carolina General Statutes require all products that contain distilled spirits, regardless of their dilution, to be classified as distilled spirits.¹¹
- Though there are some products, like vanilla or almond extract that contain spirits and are not classified as such, these products are allowable as exemptions to state law because they are “not designed for beverage use.”¹² This exemption clearly does not apply to alcopops, because they are undoubtedly sold for the specific purpose of beverage use.
- Under the 21st Amendment to the US Constitution, States have independent authority and responsibility to classify alcoholic products. Most States, including North Carolina, have enacted their own classifications for beer, wine, and distilled spirits that are distinct

⁷ Johnston L, O'Malley P, Bachman J, Schulenberg J. Monitoring the Future National Results on Adolescent Drug Use, 1975---2009. Volume 2: Secondary School Students. Bethesda, MD: National Institute on Drug Abuse; 2010. NIH publication 09-7402.

⁸ The TTB, after eight years of review, issued a final ruling on the classification of Alcopops in January 2005, adopting the so-called 51/49 standard (Federal Register/Vol. 68, No. 56/Monday, March 24, 2003/Proposed Rules). Under Federal law up to 49 percent of the alcohol in Alcopops could be derived from distilled spirits.

⁹ Mosher, J. 2012. Joe Camel in a Bottle: Diageo, the Smirnoff Brand, and the Transformation of the Youth Alcohol Market. Vol 102, No. 1 | American Journal of Public Health

¹⁰ Project Extra Mile v. Nebraska Liquor Control Commission. March 2, 2012.

http://www.projectextramile.org/files/media/Alcopops/Alcopops_Supreme_Court_Ruling_3.2.12.pdf

¹¹ N.C. Gen. Stat. § 18B-101(14).

¹² N.C. Gen. Stat. § 18b-103(10).

from the Federal definitions.

- The TTB itself acknowledges that their rulings are mere guidelines and that final beverage classification is determined by state law.¹³
- The proper classification of alcopops under North Carolina law is as distilled spirits.¹⁴

Why Should Alcopops be Reclassified?

- Properly classifying alcopops is not only the correct legal and tax classification, but it would have tremendous benefit for the public health of North Carolina.
- Properly classifying alcopops would generate an estimated additional \$7.5 million in revenue.¹⁵
- Underage drinking is a public health crisis.
- The CDC estimates that nearly 5000 youth die annually due to excessive alcohol use.
- The onset of alcohol dependence peaks by 18 years of age.⁷
- ALCOPOPs are very popular amongst youth, with 64% of 8th grade drinkers reporting regular use.¹⁶
- The proper tax rate on Alcopops would prevent underage drinking. When the price of alcoholic beverages goes up consumption of them goes down. For every 10% increase in price there is a corresponding reduction in consumption of approximately 7%.¹⁷
- Reducing the number of outlets that sell Alcopops (from all convenience and grocery stores to just ABC stores) would reduce the availability of Alcopops. By limiting the hours of sale and the number of ALCOPOP retail access points (both CDC recommended strategies to reduce youth alcohol consumption¹⁸) underage consumption of these dangerous starter drinks would decrease.

What Entity is Responsible for Alcoholic Beverage Classification in North Carolina

- The ABC Commission is responsible for applying existing statutory definitions to alcoholic products that are being sold in the state.¹⁹
- Based on current state law it is therefore the NC ABC Commission that is responsible for applying the general statutes to product classification and the proper classification of alcopops as spirits.

¹³ Federal Register/Vol. 68, No. 56/Monday, March 24, 2003/Proposed Rules

¹⁴ N.C. Gen. Stat. § 18B-101(14).

¹⁵ NC Alcopop Pricing Memo. NC Alcohol Policy Alliance 12/2012

¹⁶ Johnston L, O'Malley P, Bachman J, Schulenberg J. Monitoring the Future National Results on Adolescent Drug Use, 1975---2009. Volume 1: Secondary School Students. Bethesda, MD: National Institute on Drug Abuse; 2010. NIH publication 09-7402.

¹⁷ The CDC Community Guide. 2011. <http://www.thecommunityguide.org/alcohol/increasingtaxes.html>

¹⁸ The CDC Community Guide. 2011. <http://www.thecommunityguide.org/alcohol/index.html>

¹⁹ N.C. Gen. Stat. § 18B-203(a)(1) & NCGS 18B-206.



January 20, 2015

To Whom It May Concern,

Well known to community and health professionals, excessive drinking in youth populations can lead to numerous negative health and economic outcomes. Underage drinking kills more youth than all other illicit drugs combined. Of specific concern are alcopops (flavored alcoholic beverages), which contain large amounts of sugar and are flavored to taste like juice, soda, or energy drinks. Many alcopops contain between 8 -12% alcohol by volume and may be sold in a 24-ounce non-resealable can. These supersized cans are almost comparable to a six-pack of beer, equating to a 'binge in a can'. Despite containing distilled spirits, alcopops are sold in convenience stores, packaged with bright colors, and are affordably priced. Due to their flavoring, low price, high alcohol content, and easy accessibility, alcopops can be especially appealing to youth and young adults.

Alcopops are particularly popular with middle school and high school students. A 2009 survey showed that almost two-thirds (64%) of 8th graders who drink alcohol reported use of alcopops in the past month.¹ Girls are much more likely to consume alcopops than boys (31% v. 19% respectively).¹ Furthermore, teens are twice as likely as adults to have tried alcopops and three times more likely than adults to be aware of alcopops.² Additionally, the alcohol industry specifically targets youth focused radio station, television programs, and magazine advertisements.³ North Carolina's high rates of underage alcopop consumption have resulted in 7,834 incidents of harm and 10 deaths, costing the state over \$200 billion.⁴

The Orange County Board of Health serves as the primary policy-making body for the Health Department and aims to protect and promote the public health of Orange County. We stand with the youth of North Carolina and the Orange County Health Department as we all work together towards policy based solutions that promote a healthy community.

In keeping with our mission, the Orange County Board of Health supports community retailers who have taken steps to voluntarily reduce or entirely remove alcopops from their stores, contributing to the reduction of underage alcopop consumption. We encourage all alcohol retailers in Orange County to follow these actions by voluntarily reducing marketing and sales of alcopops. Furthermore, we support any legislation aimed at making alcopops less accessible to our youth. This includes efforts to properly classify alcopops as distilled spirits, which would reduce the number of outlets that sell alcopops from all convenience and grocery stores to just ABC stores.

Sincerely,

Orange County Board of Health Members

References

- ¹ Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. *Monitoring the Future National Results on Adolescent Drug Use: Overview of key findings, 2008* (NIH Publication No. 06-5882). Bethesda, MD: National Institute on Drug Abuse (2008).
- ² Summary of Findings: What Teens and Adults are Saying about "Alcopops". Alcohol Policies Project: Center for Science in the Public Interest; May 2001.
- ³ Jernigan, D. Alcohol advertising and youth: a measured approach. *J Public Health Policy* 26(3): 3112-325 (2005).
- ⁴ Societal Costs of Underage Drinking. *Journal of Studies on Alcohol* 67: 519-528, 2006 by T.R. Miller, D. T. Levy, R.S. Spicer, R.S. Taylor and the National Institute on Alcohol Abuse and Alcoholism, National Epidemiological Survey on Alcohol and Related Conditions. 2002.