



SPIRITED

SOME LAWMAKERS THINK FLAVORED MALT BEVERAGES NEED TIGHTER REGULATION.

BY MICHELLE BLACKSTON

Sitting alongside six-packs of Coors and Budweiser in most retail outlets is another type of drink that is raising concerns among some lawmakers—flavored malt beverages.

Mike's Hard Lemonade, Smirnoff Ice and Bacardi Silver are all part of a growing group of beverages that underage drinking prevention advocates consider a bridge drink. They are particularly attractive to underage drinkers, they say, because they are sweetened for novice drinkers who don't like the taste of beer or hard liquor.

Alcohol industry representatives note they are legal and question how significant a role they play in underage drinking.

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"Remember that [flavored malt beverages] are a very small part of the market ... and have had no impact on the rate of underage drinking," says Mark Sorini of the Flavored Malt Beverages Coalition, an advocacy group sponsored by the alcohol industry. "In fact, those rates have been declining."

Maryland Delegate William Bronrott sees it differently. He recently sponsored legislation that would restrict the sale of flavored malt beverages to stores in Maryland licensed to sell only distilled spirits.

"These drinks are particularly attractive

to younger consumers, and there are a lot of public health and safety concerns," he says.

His proposal would have effectively removed them from the shelves in some 1,400 beer-and-wine retailers across the state. The legislation failed to move out of committee, however.

Forty-seven states classify the drinks as beer, according to the Flavored Malt Beverage Coalition. The exceptions are California, Maine and Utah, although the effect of their classification varies.

Although flavored malt beverages contain distilled spirits, they are made from beer. Several states have considered legislation to reclassify the beverages as hard liquor, but faced alcohol industry opposition.

BEER OR SPIRITS?

The debate is relevant for policymakers, in part because taxes on beer are lower than on distilled spirits. In addition, beer can



DELEGATE
WILLIAM BRONROTT
MARYLAND



DEBATE

be sold in more establishments than hard liquor, giving more people easier access to flavored malt beverages.

The process to make a flavored malt beverage—often called an “alcopop”—starts with a beer base. Producers strip out all of the beer flavoring, color and odor, then add the distilled spirits, flavors and colors. Although flavored malt beverages contain roughly the same amount of alcohol as beer, about 5 percent—up to half of the alcohol—comes from distilled spirits such as whiskey or vodka.

Federal rules issued in 2005 set a maximum amount of distilled spirits that can be added to the drinks. Eight states—Kansas, Maryland, Minnesota, Missouri, Oregon, Tennessee, Virginia and Washington—amended their laws to conform to the federal regulations.

States regulate alcoholic beverage sales, however, and they should impose stricter standards than the federal rules, says James F. Mosher, an attorney and alcohol policy

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researcher with the CDM Group who has been tracking flavored malt beverages since their inception.

Mosher and underage drinking prevention advocates contend the sweet and fruity drinks appeal to young girls who don’t like the taste

of hard alcohol and beer.

“It’s a bridge beverage—a bridge between soft drinks and harder liquor—to reach young people because of the regulatory advantages,” Mosher says.

That notion, however, is disputed by the alcoholic beverage industry. The drinks “may get in the hands of youth, but other products do as well,” says Sorini. “Many underage drinkers obtain alcohol from noncommercial sources—such as adults providing it to them.”

New Mexico Representative Keith Gardner, the minority whip, thinks underage drinking is a problem, but does not agree that new restrictions on flavored malt beverages is the solution. In the 2009 legislative session he opposed a bill to tax the drinks as distilled spirits, a bill sponsors said would cut down on teen drinking.

“Underage drinking is already illegal,” Gardner says. “We need to enforce the current statutes, and look at putting more teeth in those laws.”



REPRESENTATIVE
KEITH GARDNER
NEW MEXICO



SENATOR
CURTIS S. BRAMBLE
UTAH



SENATOR
MATTIE HUNTER
ILLINOIS

LEGISLATIVE ACTION

Utah Senator Curtis S. Bramble thinks the drinks are too easy for underage teens to obtain and sponsored legislation to reclassify them as distilled spirits to remove them from supermarket shelves. It passed.

He is an ardent advocate of limiting teenagers' access to alcohol and took on this issue because of the concern that these drinks were getting into the hands of teen-age girls.

"It's the equivalent of buying a bottled mixed drink," Bramble says. "There is compelling evidence from MADD and other groups that these drinks are targeted at underage drinkers and especially young ladies. Our concern was the social impact of these alcopops. The younger people start drinking, the more likely they are to become a heavy drinker later in life."

About one-third of teen-age girls have tried flavored malt beverages, according to a survey commissioned by the American Medical Association. And of those teen-age girls who tried them, 82 percent said they agree that they taste better than beer or other alcoholic drinks. The AMA survey also found 20 percent of teen-age girls who have tried the beverages have vomited or passed out after drinking them. Twenty-five percent of the girls who have tried the drinks have driven after drinking or ridden in a car with a driver who had been drinking, and one in six teens has been sexually active after drinking them.

Illinois lawmakers concerned about these beverages passed legislation requiring that all of them sold in the state have a label that includes the alcohol content and says "contains alcohol" in bold letters. Senator Mattie Hunter, a certified alcohol and drug counselor, compares these drinks to the tobacco industry's flavored cigarettes.

"[Illinois] initially took similar action on flavored cigarettes when tobacco companies were marketing individual flavored cigarettes to kids who then became addicted," Hunter says. "There is no way to completely prevent underage drinking; however, this is another roadblock that will limit the accessibility and

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Maine was the first state to reclassify the beverages as distilled spirits in 2006. State actions to address this concern have led to an array of bills that address prevention and education. In the last two legislative sessions, bills in Arkansas, Maryland, Michigan, New Mexico, Nebraska and Vermont have addressed how to classify the drinks or called for more study.

Several of the bills failed to get out of committee, and some were postponed until the next legislative session.

CALIFORNIA LAWSUIT

California's Board of Equalization decided to classify the drinks as distilled spirits, which increased the taxes on them. Diageo-Guinness USA, a division of Diageo, the world's leading spirits, wine and beer company, and the Flavored Malt Beverage Coalition filed a lawsuit challenging the action. The plaintiffs said the board does not have the authority to reclassify an alcoholic beverage. They also argued they are malt-beverage based, making them a beer. The court ruled in favor of the Board of Equalization, and the plaintiffs are appealing the decision.

Lawmakers in Arkansas and New Mexico also have discussed legislation, and Alaska held a hearing on the drinks. Other state legislation addresses labeling the beverages so consumers are better informed and parents are aware the drinks contain alcohol.

Like Illinois, California lawmakers were concerned that many of these drinks are packaged and labeled in a manner similar to nonalcoholic beverages and energy drinks, potentially confusing consumers, including teenagers. Utah passed similar labeling legislation.

"The purpose of the labels is to inform adults the beverages contain alcohol," says Kenneth Lane, vice president for government and trade relations for Diageo. "We've never tried to hide that fact. The alcohol content has always been on our products."

Industry representatives also point to studies, such as *Monitoring the Future: National Results on Adolescent Drug Use*, an annual study from the University of Michigan Institute for Social Research, which show declines in underage drinking.

Johns Hopkins University professor of public health David H. Jernigan, however, says research indicates more than three-quarters of eighth-graders who drank alcohol indicated they had a flavored malt beverage.

Attorneys general in three states—California, Connecticut and Maine—have concluded that flavored malt beverage producers are violating state laws by marketing the beverages as beer. They argue that the producers should not be allowed to avoid the higher state taxes on hard liquor, particularly in light of the health and safety risks the drinks pose for young people and the dire fiscal crises facing most states.

Although the federal government did take action in 2005 establishing a maximum level of distilled spirits in the drinks, Jernigan believes for the most part that "there has been a federal regulatory vacuum."

"Some states are moving to fill that vacuum," he says, "whether through legislative actions or efforts by state attorneys general." ■