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Committee on Alcoholism and Drug Abuse
Senator Jeffrey D. Klein
Chair

Senator Shirley L. Huntley
Senator Neil D. Breslin
Senator Kemp Hannon

Senator John J. Bonacic
Senator Roy McDonald

SUBJECT: To explore high-alcohol flavored malt beverages, the proliferation and marketing of these drinks in the marketplace and availability of and/or access to these drinks by minors.

April 12, 2011
11:30 a.m. – 2:45 p.m.
Van Buren Hearing Room A
Legislative Office Building, 2nd Floor
Albany, New York

**Hearing of the New York State Senate
Committee on Alcoholism and Drug Abuse**

- 11:30 a.m. Opening Remarks, Committee Chair Senator Jeffrey D. Klein
Remarks by other Committee members
- 11:45 a.m. Commissioner Arlene González-Sánchez, NYS OASAS
- 12:05 p.m. Chairman Dennis Rosen, NYS Liquor Authority
- 12:25 p.m. Commissioner Thomas Farley, New York City Department of Health
- 12:45 p.m. Michael Rosen, Food Industry Alliance
James Calvin, Association of Convenience Stores
Marc E. Sorini, Flavored Malt Beverage Coalition
Greg Altscuh, Flavored Malt Beverage Coalition
- 1:10 p.m. Michele Fonda, Mothers Against Drunk Driving, New York
James Genova, Eastchester Communities That Care
- 1:30 p.m. Janet Lerner, DSW, Narco Freedom, Inc.
Judi Vining, Coordinator, Long Beach Medical Center's Coalition to Reduce Underage Drinking
- 1:50 p.m. Raimee Eck, Deputy Director of Johns Hopkins Bloomberg School of Health Center on Alcohol Marketing and Youth
Bob Pezzolesi, New York Center for Alcohol Policy Solutions
- 2:10 p.m. Det. Frank Kolarik, President of the Westchester County Youth Officer's Association
Christopher Satriale, Chief of Police, Bronxville, NY
- 2:30 p.m. Manufacturer Representatives
- 2:45 p.m. Closing remarks, Committee Chair Senator Jeffrey D. Klein

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Tuesday, April 12, 2011

***"The Proliferation and Marketing of High-Alcohol
Flavored Malt Beverages and Access to Minors"***

NYS OASAS Commissioner Arlene González-Sánchez

Written Testimony

Thank you Chairman Klein and members of the Committee for holding this hearing and for inviting me to testify about an issue that is of concern to me as the Commissioner of the Office of Alcoholism and Substance Abuse Services (OASAS). I would also like to acknowledge my colleague, Chairman Rosen, from the State Liquor Authority who will also speak to you at this hearing.

Today, I will speak with you about the marketing and access of high-alcohol flavored malt beverages and the overall problem of underage drinking in New York State.

As an increasing variety of alcoholic drinks hit grocery and convenient store shelves, concerns have been raised about the marketing strategies targeting young consumers, as well as the accessibility of these beverages to underage individuals.

As we know, easy access to alcoholic beverages for young people can often lead to serious, unwanted and unintentional consequences. Two major studies have looked at the effects of alcohol and caffeine on the body:

- A 2008 study by the University of Florida looked at college-aged students exiting bars and found that patrons who had consumed energy drinks with alcohol had a threefold increased risk of leaving the bar highly intoxicated and were four times more likely to intend to drive after drinking than bar patrons who drank alcohol only.
- A study by Wake Forest University in 2006 found that students who mix alcohol and caffeine were more likely to get injured, to get in a car with a drunk driver or to be involved in nonconsensual sex.

Despite the fact that it is against the law to purchase or consume alcohol if you are under the age of 21, as well as to sell alcoholic beverages to minors, underage drinking is widespread and remains the most serious substance abuse issue in New York State.

In the past year, the OASAS-certified treatment system served 6,500 youth between the ages of 12 and 17, as well as 24,600 young adults between the ages of 18 and 24. This is much reason for concern. In recent years, scientists have studied the effects of alcohol on the brain. We have learned that a growing adolescent brain is more sensitive to damage from alcohol use than an adult's brain. Also, alcohol use can have detrimental, long-term effects on the developing brain.

In 2007, 23 percent of New York State students in grades 9-12 self-reported that they had their first drink before the age of 13. A federal survey of college students in 2008 indicated that alcohol is the most popular substance used by New York college students with 46 percent drinking once a week or more. The alarming rate of underage alcohol use and binge drinking by high school and college students in New York State reflects the development of drinking patterns which are established early. These patterns result in higher rates of alcohol abuse, poor academic performance, sexual assaults and alcohol overdoses.

Underage drinking in New York State is also a costly problem in terms of dollars. Youth violence and traffic crashes caused by underage drinking represents the largest of these costs to New York State, translating to a cost of \$1,802 per year for each youth in the State. The direct cost of underage drinking incurred through medical care and loss of work cost New Yorkers \$1.2 billion each year. Additionally, in 2007, underage drinking represented 17 percent of all alcohol purchased in New York State, totaling \$2.2 billion in sales.

Since 1998, OASAS has been designated as the state agency that oversees administration of the federal Office of Juvenile Justice and Delinquency Prevention's "Enforcing the Underage Drinking Laws" (EUDL) Program. The EUDL program supports state efforts to prohibit the sale of alcoholic beverages to minors, as well as the purchase and consumption by underage individuals. The program has enhanced areas such as: information dissemination, local funding opportunities, training initiatives, technical assistance, and the support of increased enforcement efforts.

Through a partnership between OASAS and law enforcement, the New York State Police have increased law enforcement, compliance checks and DWI sweeps across the state. In addition, a two-hour underage drinking prevention workshop has been integrated into the Standardized Field Sobriety Testing Curriculum at the NYS Police Academy. Since the inception of the workshop, 608 New York State Police recruits have been trained in underage drinking prevention.

The EUDL program also supports partnerships between prevention providers and law enforcement in 27 communities, as well as continuation of the 1-866-UNDER 21

Underage Drinking Hotline to provide the public with the means to report underage sale and/or consumption of alcoholic beverages.

Furthermore, research shows that one of the best approaches to addressing the problem of underage drinking is to utilize “environmental prevention strategies.” Environmental prevention strategies are evidenced-based approaches designed to achieve community-level change focused on the problems of underage drinking. The OASAS EUDL Program has strengthened the State’s prevention capacity through environmental strategies that include enforcement, public information and education, media awareness campaigns and policy development. These efforts have been proven to decrease youth access to alcohol and change norms and attitudes favorable to underage alcohol use.

In the last few years, OASAS has provided extensive training, technical assistance and funding to both prevention organizations and law enforcement agencies to emphasize the critical importance of incorporating environmental strategies as part of an integrated prevention approach.

OASAS also has been actively working to address childhood and underage drinking, reduce substance-related problems, and build New York’s prevention capacity and infrastructure through work with the Advisory Council on Underage Alcohol Consumption, which was created in 2008 to help guide New York State’s efforts in addressing this problem; media campaigns designed to target parents of teenagers and to encourage parents to talk to kids about the dangers of underage drinking; and the administration of the Strategic Prevention Framework State Incentive Grant (SPF-SIG) funded by the federal Substance Abuse and Mental Health Services Administration to help support local efforts to prevent the onset and reduce the progression of substance abuse.

Moving forward we must continue working together to help our communities prevent underage drinking in New York State by promoting education and awareness, increasing enforcement on the sale of alcohol to those under 21, and ensuring minors do not have easy access to beverages containing alcohol.

Thank you once again for the opportunity to be here today.

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April 12, 2011

TESTIMONY SUBMITTED BY DENNIS ROSEN, CHAIRMAN, NEW YORK STATE LIQUOR AUTHORITY, TO THE NEW YORK STATE SENATE COMMITTEE ON ALCOHOLISM AND DRUG ABUSE

Good morning, Chairman Klein and distinguished Members of the Committee. My name is Dennis Rosen, and I am the Chairman of the New York State Liquor Authority. Thank you for convening this hearing and for inviting me to testify. I have submitted my testimony to the Committee, which I ask be made part of the hearing record.

Our agency regulates approximately 70,000 licenses and permits statewide each year; this includes 15,538 licensed grocery stores statewide, with 7,643 of these licenses in New York City. In addition, there are currently 2,911 liquor stores statewide, with 1,208 in New York City. I cite these numbers to provide you with a picture of just how many licensees there are. This is not to diminish your contention, as you correctly note in your invitation to testify at today's hearing, that there have been too many incidents where minors have been able to purchase alcoholic beverages; it is only to point out the formidable task faced by our agency and its local law enforcement partners. Nevertheless, I can assure you that the SLA is committed to protecting the public health and safety, and our resources are dedicated to cracking down on illegal sales. When a licensee sells to a minor, that licensee is putting his/her license and livelihood in jeopardy.

Since my appointment, we have been focusing our enforcement priorities on tackling problems such as underage sales and sales to intoxicated patrons. One of my first acts was to move a Deputy CEO line from Albany to New York City, as many of the more serious enforcement issues emanate from there. This Deputy CEO is a former Manhattan Assistant District Attorney with extensive law enforcement contacts that have been invaluable to our enforcement efforts. We also hired a new General Counsel and moved this line to our New York City office.

We have been concentrating our limited resources on serious cases like sales to minors, as opposed to bringing technical charges that do nothing to protect the public and only make it harder for hardworking licensees to conduct business. The numbers bear this out. In 2009, members of the SLA Board ruled on 4,225 disciplinary matters that our counsel's office submitted. In 2010 the number of cases brought declined to 3,649. However, the total value of penalties imposed increased because the cases brought were generally of a more serious nature. Fines went up by over \$100,000 and the Board's termination of licenses for cause – whether by revocation or cancellation – increased from 426 in 2009 to 499 in 2010.

In your district alone, Senator Klein, we recently conducted 11 underage operations with the NYPD, which I know you are aware of since some of the violators were brought to our attention by your office. In fact, I'd like to thank you for both the individual cases you continue to bring to our attention, as well as for your efforts in bringing important issues like underage drinking to the forefront.

We have worked hard to develop partnerships in our efforts to address underage drinking. We conduct training programs for police departments as they collaborate with us in pursuing sales to minors cases. We also participate in a number of diverse community groups throughout the state that tackle these problems, such as The Committee on University and Community Relations, which is here in Albany and with which I have personally been involved.

In addition to our general enforcement efforts, our office has also taken “outside the box” approaches to combating underage and excessive drinking. For example, on November 14, 2010, before any federal agency acted, we announced an agreement with the State’s beer distributors to voluntarily stop selling malt beverages, such as Four Loko and Joose, that contained caffeine and other stimulants. We reached agreements with the manufacturers shortly thereafter. This was the result of a collaborative process whereby the SLA asked the industry to step up to the plate while the FDA eventually made its ruling that these products’ combining of stimulants, such as caffeine, with alcohol, which is a depressant, posed serious health hazards. This is but one example of many I could cite during my year-and-a-half at the SLA where the industry has, in collaboration with the agency, acted in the public interest. With respect to flavored malt beverages, we agree that products that contain more alcohol than the typical amounts usually contained in beer, when combined with sweeteners and other flavorings may, under certain circumstances, be overly attractive to underage purchasers.

Again, thank you, Mr. Chairman and Committee members, for the opportunity to appear before you today. I’m happy to answer any questions the members may have.

**NEW YORK STATE STANDING COMMITTEE
ALCOHOLISM & DRUG ABUSE**

**PUBLIC HEARING
ON
HIGH ALCOHOL FLAVORED MALT BEVERAGES**

TUESDAY, APRIL 12, 2011

**Testimony Submitted By:
Michael E. Rosen
Senior Vice President & General Counsel
Food Industry Alliance of NYS, Inc.**

Chairman Klein, members of the committee, my name is Michael Rosen. I am the Senior Vice President and General Counsel of the Food Industry Alliance of New York State, Inc. The Food Industry Alliance is a not-for-profit statewide trade association representing the interests of all sizes of retail grocery stores. Our members include multi-state chains like Hannaford, Stop and Shop, Pathmark and Price Chopper, New York companies like King Kullen, D'Agostino's and Tops as well as independent grocers many of whom operate under common trade names like ShopRite, C-Town, Met Food, Key Food and IGA as well as some convenience stores.

Let me say at the onset that we appreciate and support your effort as Chair of the Alcoholism and Drug Abuse Committee to remove high alcohol flavored malt beverages from the marketplace. In our view, products like Four Loco are being marketed to young adults. These beverages encourage excessive alcohol consumption by inexperienced drinkers. We support removing them from the marketplace or limiting the venues for sale.

We do, however, have concerns regarding how the definition contained in the bill will affect legitimate beers, including locally brewed craft beers, and the flavored malt beverages that are currently on store shelves and enjoyed by adult consumers of all ages.

Let me note for the record that our members take their responsibilities in preventing underage sales very seriously. Most employ a number of safeguards including giving SLA approved training to cashiers, employing cash register prompts to request ID, and adopting policies of proofing all purchasers regardless of age. Many stores conduct their own internal compliance buys and maintain a record of the ID presented. They have well lit frontends with security cameras that discourage underage purchases.

Our members are proud of their record in this regard. For example, the DeCicco's, who have five stores in New York, have operated their Pelham store for over 30 years with no underage sales violations. Locally, Price Chopper, which has voluntarily implemented a policy of proofing all purchasers regardless of age, has processed over 6.4 million alcohol transactions within the past two years without a single infraction.

That said, we are concerned with the new definition for "flavored malt beverages." These are defined as "any alcoholic beverage of any name or description that is manufactured from malt, wholly or in part, or from any substitute therefore including, but not limited to liquor, spirit or wine; and containing more than six per centum alcohol by volume and more than one per centum sugar by volume, which is manufactured with the addition of flavorings and other ingredients" including fruits, juices, herbs, nuts and spices. The State Liquor Authority is further empowered to expand upon those alcoholic beverages, which could be deemed flavored malt beverages and additionally include those products "that would appeal to persons under the age of 21 years."

Let me readily admit that while I may know a lot about retail sales, I do not know much about beer chemistry. However, in discussing the beer with industry experts, including local craft breweries with whom our members have long standing relationships, we are advised of the following:

1. Many craft beers, particularly Belgium Ales and IPA's, exceed the six percent alcohol by volume threshold. We are also told that some national flavored malt beverages including Mike's Hard Lemonade have products that exceed the six percent by volume standard.

2. We are advised that sugar is a natural by-product of the fermentation process and that all beer contains more than one percent sugar by volume. For example, one local brewer told us that Pale Ale might start out as a wort (unfermented beer) containing 13.5 percent sugar with the final product having between 2.5 percent and 3.0 percent sugar by volume. Even the national beers like Miller, Coors and Budweiser exceed the one percent sugar by volume standard.

We are advised that there is no other law in the country that measures beer by sugar content in the final product. This would establish an unknown standard for regulators, breweries, distributors and retailers alike.

3. Lastly, we are told that all beers and flavored malt beverages are flavored in some fashion by their ingredients. Our members have long sold products like Honey Brown Lager made by the High Falls Brewery, Saranac Black Forest by FX Matts and Sam Adams seasonal summer ale, which is brewed with malted wheat, lemon peel and pepper. There are other more recent flavored products in the marketplace like Saranac's Vanilla Stout and Brooklyn Brewery's Pumpkin Ale that we would not want taken from retailers.

The same could be said of traditional flavored malt beverages like Mike's Hard Lemonade, Twisted Tea and Smirnoff Ice most of which contain fruit flavoring.

The standard in the bill of allowing the SLA to expand the restrictions to those products that "appeal to persons under the age of twenty-one" appears to be arbitrary and impractical based upon the wide range of legitimate flavored products of various alcohol levels and sugars that are presently in the marketplace.

We note that craft beers and products like the Saranac variety packs are not likely to appeal to a young adult based upon both the price points at which these products are sold and the sophisticated flavoring of the selections.

In view of the above, we respectfully request the opportunity to work with you and experts in the industry at further refining the definitions contained

in the bill. Once again we applaud the intent behind the bill at banning high alcohol beverages aimed at young adults, but wish to further refine the language being proposed.

Thank you for giving us an opportunity to testify.

I will be happy to answer any questions.



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**Testimony of James S. Calvin, President
NEW YORK ASSOCIATION OF CONVENIENCE STORES**

before the

**SENATE COMMITTEE ON ALCOHOLISM AND SUBSTANCE ABUSE
Hon. Jeffrey D. Klein, Chair**

April 12, 2011, Albany NY

Chairman Klein, Senator Bonacic, and honorable Members of the Committee, thank you for the opportunity to speak with you today.

I appear on behalf of approximately 1,600 NYACS-member convenience stores that are currently licensed by the State Liquor Authority to responsibly sell beer, wine coolers and flavored malt beverages to adult customers in accordance with state and local alcoholic beverage control regulations. These retailers are predominantly Upstate and on Long Island.

As parents, citizens, and community businesspeople, we share your commitment to preventing youth access to alcoholic beverages. Our association is a State Liquor Authority-approved provider of certified alcohol sales training to owners, managers and cashiers of retail establishments licensed to sell for off-premise consumption.

While I'm no expert on flavored malt beverages, I have some observations and opinions to share concerning their sale in the convenience store setting.

The truth is that privately, many of our members were relieved when the FDA and the SLA took steps to outlaw Four Loko and other caffeinated alcoholic beverages, because they too had become apprehensive about the combination of such high doses of caffeine and alcohol. Some, in fact, had already voluntarily discontinued the product.

But we had understood the *caffeine* to be the primary concern. When the maker of Four Loko removed the caffeine, the FDA called it a positive step, and the SLA subsequently

permitted reformulated versions of the product, still containing alcohol but now free of caffeine, to return to New York store shelves.

Today, however, the focus of the Committee appears to have shifted to the *alcohol* content of *non-caffeinated* flavored malt beverages, to the point where you have before you legislation that would confine some of them to liquor stores.

The Category

Our stores have been selling flavored malt beverages for more than a decade. One example is Bacardi Silver, available in various flavors, ranging from 4% to 6% alcohol. Some Bacardi Silver is bottled here in New York, at the Anheuser Busch brewery in Baldwinsville, north of Syracuse. Other leading brands include Smirnoff Ice, Captain Morgan Parrot Bay, and Mike's Hard Lemonade.

At the direction of Congress, the Federal Trade Commission released a report in 2003 which concluded that "adults appear to be the intended target of FMB marketing, and the products have established a niche in the adult market. The investigation found no evidence of targeting underage consumers in the FMB market."

This obviously pre-dated Four Loko, which was launched in 2005 and exploded in popularity in 2009, after major brewers had voluntarily withdrawn their own caffeinated alcoholic beverages from the market. Containing 12% alcohol by volume along with caffeine, guarana, and taurine, Four Loko was packaged in 23.5-ounce cans.

National convenience store industry data (The Nielsen Co., Symphony IRI Group) indicate that gross sales of FMB's in 2009 averaged \$408 per store per month, accounting for three-tenths of one percent of sales inside the store. Looked at another way, they represented 3.6% of sales that fell within the overall beer category.

Thus, flavored malt beverages are a small fraction of our business. But given New York's hostile regulatory environment, every single product we carry is vital to keeping the convenience store afloat. More on that later.

Underage Sales

I was as alarmed as you were by the high level of non-compliance reported in the Bronx Borough Command investigation initiated by Senator Klein, where 17 of the 23 stores in the sample were said to have sold alcohol to the undercover minor. That failure rate is far higher than the state average for off-premise retail outlets, which we understand to be around 3 percent.

There could be any number of explanations for this discrepancy, but one question I keep coming back to is whether the cashier recognized the product as a flavored malt beverage

as opposed to a *non*-alcoholic energy drink. Senator Klein raises a valid point concerning similarities in appearance between cans of certain flavored malt beverages and non-alcoholic energy drinks. Further changes in labeling or packaging to more clearly distinguish the two may be warranted.

The Bronx experience notwithstanding, I would caution against drawing a broad conclusion that because minors are obtaining FMB's, and convenience stores sell FMB's, therefore convenience stores must be the primary source of FMB's for minors.

Keep in mind that the National Survey on Drug Use and Health consistently shows that the vast majority of underage drinkers get alcohol not by purchasing it directly from retail stores, but from adult friends, relatives and acquaintances who either give it to them or buy it for them.

This survey, performed by the Substance Abuse and Mental Health Services Administration, an agency of the U.S. Department of Health and Human Services, found that among underage drinkers in 2009, only 9 percent purchased the alcohol themselves, while 21 percent gave money to someone else to buy it. The remaining 70 percent got it from an unrelated adult, other underage person, adult family member, or other source.

What this data tells me is that removing these products from convenience stores would only nibble around the edges of the youth access problem, because 90 percent of minors who manage to access flavored malt beverages now would still be able to access flavored malt beverages.

Moreover, it's a myth that liquor stores can only be patronized by adults. State Liquor Authority enforcement records will confirm that every year, liquor stores are among the licensed establishments charged with and penalized for underage sales to an undercover minor. In fact, I am under the impression that the compliance check failure rate for New York liquor stores is around 2 percent. That's better than the grocery store/convenience store rate of 3 percent, but proponents of restricting FMB's to liquor stores seem to think it's zero.

The Context

Allow me to explain the prism through which our industry views the notion of the State removing flavored malt beverages from their shelves.

Historically, cigarettes have been a core product category for convenience stores. Nationally, they still account for a third of total inside sales, but not here. Over the past 10 years, we have lost 60% to 80% of our cigarette sales and the customer traffic they generated. While consumption has waned, the dramatic plunge in our sales volume is mainly attributable to an epidemic of cigarette tax evasion induced by New York State, which has increased the tax rate 690% while failing to close off channels for tax

avoidance despite the persistent efforts of “Tax Fairness Tigers” like Senator Klein to level the playing field.

Consequently, our customer counts are down sharply, translating to lower sales of not only cigarettes, but lottery, coffee, food, and everything else inside the store, jeopardizing the viability of many convenience stores, especially mom-and-pop enterprises. Meanwhile, our unlicensed, untaxed, unregulated competitors sell 50 times the cigarette volume we do while thumbing their noses at state and local standards for commerce.

This leaves our members struggling to hold onto the reduced traffic and sales volume they have left, and actively searching for new products and services to offer in order to rebuild their customer base, which is very hard in this economy. They simply cannot afford to lose any more products. This is the sad reality they have been dealt by State tax policy.

You may deem all this irrelevant to today’s topic, but it is central to understanding why convenience store owners react to new proposals like this to restrict what they can sell by exclaiming: “Quit chasing more of our customers away!”

Conclusion

To summarize, NYACS supports more severe penalties for retailers who knowingly sell caffeinated alcoholic beverages in violation of the recent ban. But we oppose removing flavored malt beverages from convenience stores, because it would further weaken our businesses *without* solving the youth access problem. Labeling changes might help consumers, store employees, parents and law enforcement better differentiate flavored malt beverages from non-alcoholic energy drinks and thereby reduce the risk of inadvertent underage sales.

In closing, I thank the Committee for undertaking this inquiry, and remind everyone that if you have knowledge of a store selling any alcoholic beverage to minors, promptly report it to either a police agency or the SLA so it can be curtailed immediately.



**CAMPAIGN TO
ELIMINATE
DRUNK DRIVING**

**Michele Fonda, Program Specialist
Mothers Against Drunk Driving
Before the Senate Committee on Alcoholism and Drug Abuse
Testimony Regarding High Alcohol Flavored Malt Beverages
12 April 2011**

Thank you Mr. Chairman and members of the committee for allowing me the opportunity to submit testimony regarding high-alcohol flavored malt beverages. My name is Michele Fonda, Program Specialist with the New York State Charter Office of Mothers Against Drunk Driving, also known as MADD.

MADD's mission is to stop drunk driving, serve the victims of this violent crime and prevent underage drinking. We work through core values of vision, leadership, integrity, compassion and community. Mothers Against Drunk Driving is *not* against the responsible consumption of alcohol of any kind for those of the legal drinking age of 21 or older.

As I mentioned, a key portion of MADD's mission is to prevent underage drinking. The 21 drinking age has helped save over 27,000 lives.¹ *However*, teen alcohol use kills about 6,000 youth each year, more than all illegal drugs combined.² Car crashes are the leading cause of death for teens, and about one-third of those are alcohol related.³ Other alarming statistics show that one in three 8th graders has tried alcohol,⁴ and more than half of all 10th graders drink alcohol.⁵ MADD's major concern with these high-alcohol flavored malt beverages is accessibility.

According to data from a Monitoring the Future national survey, about 75% of teens try alcohol outside the home before graduating from high school. Large amounts of alcohol can do *major* damage to the youth's developing brain and

digestive system, and can hurt their heart, liver, stomach and several other critical organs, as well as losing years from their life. Alcohol affects the frontal lobe of the brain, which contains most of the sensitive neurons in the cerebral cortex and is associated with reward, attention, long-term memory, planning and drive. The executive functions of the frontal lobes involve the ability to recognize future consequences resulting from current actions – to choose between good and bad actions. It overrides and suppresses unacceptable social responses, and determines similarities between differences – specifically between things or events. Therefore, it is involved with higher mental functions. Young people are vulnerable to increased problems associated with the use of these products, as they are more likely to misjudge their own intoxication and are more likely to take risks. They may also suffer high rates of alcohol problems, including alcohol-related traffic crashes, violence, sexual assault, and even suicide. Youth do not cognitively understand the consequences and perils after consuming alcohol.

Underage drinking costs American taxpayers billions of dollars each year, and pales in comparison to the monies spent on alcohol advertising and promotion. MADD has concerns with these high-alcohol flavored malt beverages discussed today, as they are marketed to those under the legal drinking age of 21, and invoke harm to youth. It *does* make a difference how and when alcohol is advertised and marketed, especially to those under the age of 21. Responsible marketing includes the placement in stores, the packaging of the product, and the time, place and manner of any advertising for the product: These products should be placed alongside other high alcohol content beverages; They should be *clearly* packaged like an alcoholic beverage, and *not* in a way that it could be mistaken for a non-alcoholic beverage; and Advertising for these products should be broadcast on programming with 90% or higher viewership over the age of 21.

Currently High-Alcohol Flavored Malt Beverages are not marketed to those of the legal drinking age, and underage youth are enticed to partake because these types of beverages are easily accessible and inexpensive for a high volume of alcohol. Our NY MADD offices receive a large number of calls -- and all too frequently from victims, families and friends of those affected by the overconsumption of these types of products by youth under the age 21. For example, we received numerous calls where an underage driver in Syracuse had consumed three cans of one of these products, got behind the wheel, sped in and out of traffic, which tragically resulted in a crash that killed her best friend, who was a passenger in the vehicle. This crash *devastated* the families of all involved, their classmates, and the community. We also receive calls regarding injuries, sexual assault and alcohol poisoning as a result of these types of products. I could tell you many heart-wrenching stories, but they are too numerous to share with you today.

Reclassifying these high alcohol flavored malt beverages (better known as “binge in a can”) would highly decrease their access by youth, and reduce underage overconsumption.

Although most teens do learn about alcohol in their school health classes, research shows that many important issues never get covered. School programs alone are not enough to stop teens from drinking. Unfortunately the reality is that many teens at this point in their lives are still uninformed about how powerful a drug alcohol can be. Leading national surveys reveal that parents are the number one source that teens turn to for important information. Parents can influence their teens’ decision not to drink alcohol. As a result of this, MADD is renewing our commitment of supporting 21 as the minimum age for consumption of alcohol through our recently launched program: “The Power of Parents, It’s Your Influence”[®]. We are launching this program because one in five teens binge drink, yet only 1 in 100 parents believes his or her teen binge drinks.⁶ We

need to engage parents and guardians to speak with their children about the importance of *why* 21 is the legal drinking age. This new initiative aims to empower parents by providing them with resources when talking to their children about the perils and dangers of alcohol. For more information on MADD's Power of Parents, It's Your Influence, please visit our website:
www.madd.org/powerofparents

Today's hearing on these dangerous high alcohol flavored malt beverages is necessary, as these drinks are marketed to those under the legal drinking age. While MADD is encouraged by the progress made over the last several years, the calls we receive *each* day remind us of how much work there is left to be done. It is an ongoing challenge that can be only met if everyone chooses to get involved. Please know that we appreciate the Senate Committee members' willingness to take a stand, and we commend all law enforcement across the state in their efforts to keep youth safe. MADD is in support of Bill#S4221 and its enactment would be a positive step in the right direction in the prevention of underage drinking, thereby preventing another tragedy.

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- 1 National Highway Traffic Safety Administration. "Traffic Safety Facts 2008: Young Drivers". DOT 811 169. Washington DC: National Highway Traffic Safety Administration, 2009. <http://www-nrd.nhtsa.dot.gov/Pubs/811169.PDF>
 - 2 (Hingson and Kenkel, 2003) Full cite: Hingson, Ralph and D. Kenkel. "Social and Health Consequences of Underage Drinking." In press. As quoted in Institute of Medicine National Research Council of the National Academies. Bonnie, Richard J. and Mary Ellen O'Connell, eds. Reducing Underage Drinking: A Collective Responsibility. Washington, DC: The National Academies Press, 2003.
 - 3 (Institute of Medicine, 2003) Full cite: Institute of Medicine National Research Council of the National Academies. Bonnie, Richard J. and Mary Ellen O'Connell, eds. Reducing Underage Drinking: A Collective Responsibility. Washington, DC: The National Academies Press, 2003.
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EASTCHESTER COMMUNITIES THAT CARE
James Genova

Senator Klein, Members of the New York State Senate Committee on Alcoholism and Drug Abuse, and my esteemed colleagues in the field of alcohol and other drug prevention, good afternoon.

My name is James Genova and I am the Project Director of Eastchester Communities That Care, a community based alcohol and other drug prevention coalition, located in Eastchester, New York. Eastchester Communities That Care is a coalition that consists of adults, youth and the key leaders of the Eastchester community and is a collaborative partnership with the Andrus Children's Center. I speak to you today both as a representative of the Eastchester community, and as a parent of three children, the eldest of which is a 15 year old daughter.

Thank-you for this opportunity to provide testimony on alco-pops and other flavored malt beverages, often and rightfully referred to as "binge in a can" products. I would like to state my support for this hearing and the efforts of Senator Klein and all the other concerned advocates and legislators across New York who have been working diligently since last summer to limit the access of these products to the youth of our great State.

In 2007 the United States Surgeon General Dr. Kenneth P. Moritsugu, published *The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking, 2007*. In this *Call to Action*, underage alcohol consumption is described as a "widespread and persistent public health and safety problem that creates serious personal, social and economic consequences for adolescents, their families, communities and the Nation as a whole." The *Call to Action* goes on to state its intention to "engage all levels of government as well as individuals and private sector institutions and organizations in a coordinated, multi-faceted effort to prevent and reduce underage drinking and its adverse consequences."

In the United States, alcohol is the most widely abused substance by youth and the average age of first alcohol use is 14 years old. The research on adolescent alcohol use demonstrates that adolescents drink on average, five drinks per occasion. The Center for Disease Control has defined "binge drinking" as 5 or more drinks for men or four or more drinks for women in a two hour period. Each year, alcohol takes more lives of young people ages 12-21 than all other drugs combined.

As you are aware, many of the “binge in a can” products contain as much as 12% alcohol by volume and are sold in large 23.5 oz containers. This equates to 4.7 standard drinks in one can, priced in Eastchester at about \$3.00 each or about \$0.64 cents per drink. That is 50% less than the cost of a 16 oz bottle of water. Adolescents drink alcohol for one purpose and for one purpose only, and that is to get drunk. The pricing of these products obviously have teenagers in mind, as the beverages are priced to be affordable to young people and will provide a “cheap drunk.”

Because the minimum drinking age in all states is 21, adolescents who choose to use alcohol often attempt to drink as much as they can in a short amount of time and do so while trying to avoid detection. These jumbo sized products are sweetened with sugar and marketed in youth friendly flavors such as blue raspberry, watermelon, Brazilian Berry UVA, and fruit punch. The sugary sweeteners disguise the alcohol and the heavy malt taste and allow for rapid consumption, which increases the likelihood of alcohol poisoning. These products are packaged in brightly colored cans that eerily resemble energy drinks and flavored iced teas. The bright designs of the can help to reduce detection, no matter what warnings the makers will tell you they have printed on the can. Let’s not be fooled here, these are not responsible products and they are not intended for adult consumption.

Phusion Projects’ own advertisement of their Four loko products use phrases such as “eye catching packaging” and “bright, pop off the shelves graphics” that promise to “drop a bombshell on the market place.” One Phusion product even touts that the UVA berries have been “revered for centuries for having mystical healing powers” and promises a “mind blowing experience.” Well, here is where I can agree with Phusion Projects. I certainly believe their products and products like theirs have certainly “dropped a bomb shell” and have created “mind-blowing experiences.” Unfortunately the bomb shell they dropped is on the teens of New York State and this Nation and it is their minds they are blowing. What an incredible example of shameless and dangerous advertising techniques.

In Eastchester and all throughout Westchester County, 30 day alcohol use among teens, and binge drinking rates are higher than National and New York State averages. In Westchester County, local prevention efforts are strong and collaborative in nature, however the presence of the “binge in a can” products has created new challenges for parents, educators, health care professionals and law enforcement as these products have been identified as a major contributor to the use rates that are assaulting our children.

It has been long established that restricting youth access to alcohol is an effective environmental strategy in reducing underage drinking. Restricting youth access to alcohol can be accomplished by both limiting the number of point of sale locations for

these “binge in a can” products to liquor stores only and by classifying and taxing them as liquor, not beer, thereby raising the price of these products. While the proper procedures for identification need to be followed by the retailers, please do not accept the premise stated by the product developers that the retailers are the ones responsible for their products being used illegally by youth. They are responsible for the creation of these products and the unscrupulous methods of designing their containers and marketing them to youth.

Underage drinking is not just an underage problem. Youth cannot vote and they cannot alone advocate for their own protection. As stated by the Surgeon General, coordinated and multi-faceted approaches from all sectors of the community including government and the business community are required to prevent and reduce underage alcohol use.

Effective legislation, such as the legislation to amend the Alcoholic Beverage Control law proposed by Senator Klein is needed to achieve the objective of restricting youth access to these dangerous products. If the makers of these products are serious about their commitment toward responsible alcohol use, they will not oppose this legislation as it would not inhibit the sale of their products to adults. However if they are concerned about their overall profits and neglect their social responsibility to America’s youth, then of course they will object to Senator Klein’s legislation.

On behalf of the Eastchester community, the Andrus Children’s Center and my own three children, I thank you for the time you have given me here today and for your thoughtful consideration.

**Written Testimony of
Judi Vining
Coordinator - Long Beach Medical Center's
Coalition to Prevent Underage Drinking
April 12, 2011**

My name is Judi Vining. I am the Coordinator of Long Beach Medical Center's Coalition to Prevent Underage Drinking. I am also Co-Chair the New York State Environmental Prevention Task Force and I thank you for the opportunity to speak with you today about this all important issue.

According to the 2008 New York State Youth Development Survey, 48% of all 11&12th graders report using alcohol within the past 20 days, and 28.2% report binge drinking, with that definition being having five or more drinks in a row within the past two weeks. The average age of first drink in New York State is 13. In fact, the state's new Prevention First-NY! Grant is providing funding to 11 NYS Coalitions to address 9-12th grade underage drinking in communities with consumption rates over the state average. According the Partnership for a Drug Free America's just released 22nd Annual Partnership Attitude Tracking Study sponsored by the Met/Life Foundation, an alarming trend has emerged since 2008: "underage drinking is becoming more normalized among adolescents and parents feel unable to respond..." The study states that 45% of teens report they do not see a 'great risk' in heavy daily drinking, while only 31 percent of teens strongly disapprove their peers getting drunk.

My community of Long Beach is small city located on a barrier island just off the south shore of Long Island. We have a population of 42,000 persons including, approximately 4500 students in our schools. We have our own court, police department, medical center and city council. We occupy 3.5 square miles and there are currently 83 locations where alcohol can be purchased - including a card store and our local CVS and Walgreen's. Only 7 of those 83 outlets are liquor stores. We have compliance checks, merchant trainings, and dedicated patrols - BUT - with the preponderance of outlets having rapid turnover in personnel, it

is difficult to stay ahead of the problem. We have a crisis in our community, in our state, and in our country around underage drinking. I routinely conduct focus groups with youth who have received summonses for being in possession of alcoholic beverages. They report dangerous binge drinking, stating that drinking between 12 and 18 drinks are 'manageable' and not dangerous. This underscores national survey data which report the decrease in 'perception of risk'.

Our community was awarded one of the Prevention First-NY! Grants precisely because our consumption of rate of 60% for underage drinking surpassed the state average. In addition, 50% of our 11th & 12th grade students report binge drinking, as compared to 28% statewide. This is simply unacceptable. Our Coalition believes strongly in environmental prevention which, simply stated, consists of limiting access, increasing enforcement and education – not only of the youth, but more importantly, for the community. This is the public health model which has been so successful in dealing with tobacco and its related public health risks. You have testimony by others today that youth are actively marketed to by the alcohol industry. After all, what percentage of 50 year old men (or women for that matter) do we really think drink sweetened high alcohol content beverages such as Four Loko and Joose – and those that do I'm sure would have no problem purchasing their beverage in a liquor store.

Fortified malt liquor beverages are known in our field as 'binge in a can' precisely because they are cheap, provide the equivalent of between 4.6 and 5.6 standard drinks per can, (one single can of Four Loko meets the definition of binge drinking – 5 or more standard drinks for men, 4 or more for women). The cans themselves are easily mistaken by inexperienced clerks and cashiers for other non-alcoholic beverages such as Arizona Iced Tea. In the 2008 Youth Developmental Survey, 36% of Long Beach's 11th & 12th graders report the source of their alcohol to be stores where they or their under 21 year old friends purchased with either no ID or fake ID. Reclassification of these high alcohol content beverages would severely limit youth access - a proven environmental strategy to reduce underage drinking- simply by cutting our local number of possible sources from 76 to 7.

I have read with interest the March 27, 2011 press release by PHUSION Projects in which they state that they support 'continued, diligent enforcement of the law and ID checks " but what they do not talk about is that they designed and marketed their beverage to be consumed by youth. They also state that products such as Mike's Hard Lemonade, Twisted Tea and Smirnoff Ice are 'widely accepted' beverages. I would ask, by whom?

The real question for those of us in the field, indeed for those of you in government, is what is our role? Is it not to protect our youth, not only from the vendors of products such as Four Loko, but also from themselves if need be? The latest brain research shows that the adolescent brain is not fully developed until their mid-twenties, and that the last part of the brain to develop is the part that we could liken to the 'brakes' on a car - that tells us to use caution, to refrain from taking risks. This is knowledge that we did not have a decade ago. This knowledge is a call to action for those of us who are involved in the fight to reduce underage drinking. We are in the same position now that we were in 25 or more years ago when science caught up with what we in the field long suspected - that alcohol was damaging to the fetus - and could not get the word out fast enough. Today, we are appalled if we see a pregnant woman with an alcoholic beverage. In much the same way, now that we know that brain development lasts until mid-twenties, and we know that alcohol is damaging to developing tissue, we need to get this word out fast! Perhaps in the next decade, people will be equally appalled to see a teenager with a drink in hand. But - until that happens, we need to protect those who do not have the ability, or in this case the brain development, to make good choices. That is what this reclassification is about.

Our Coalition's 'mantra' if you will, has always been: Underage drinking is not a child's problem, it is an ADULT problem, because anywhere, anytime you have a child drinking, you MUST have an adult involved: either selling it, providing it, allowing it, or simply looking away. This hearing is the first step towards not collectively 'looking away.'

Our Coalition thanks Senator Klien for his leadership in proposing legislation which is the first step in limiting limit youth access and I thank you for listening.

**New York State Senate
Senate Bill 4221
April 12, 2011
Testimony of David H. Jernigan by Raimee Eck
Position: Supporting**

My name is Raimee Eck and I am testifying on behalf of Dr. David Jernigan, the Director of the Center on Alcohol Marketing and Youth at Johns Hopkins Bloomberg School of Public Health in Baltimore, MD. In my remarks today, I will begin by setting the context for alcohol advertising and promotion to youth through a brief description of the profile and consequences of youth alcohol use, and a summary of research on the effects of alcohol advertising on youth. This will lead into a review of the products and marketing of high alcohol flavored malt beverages. The opinions expressed herein are our own, and do not necessarily reflect the views of The Johns Hopkins University.

Alcohol is the leading drug problem among youth and is responsible for at least 5,000 deaths per year among persons under 21.¹ In 2009, 10.4 million (27.5 percent) young people in the U.S. ages 12 to 20 reported drinking in the past month, and 6.9 million (18.1 percent) reported binge drinking (defined as five or more drinks at one sitting, usually within two hours).² Every day in the U.S., 4,750 young people under age 16 have their first full drink of alcohol.³ This is a problem because the earlier young people start drinking, the more likely they are to suffer alcohol-related health and social problems later in life.¹ Compared to those who wait until they are 21 to drink, young people who start drinking before age 15 are five times more likely to become alcohol dependent,⁴ six times more likely to be in a physical fight after drinking, more than six times more likely to be in a motor vehicle crash because of drinking, and almost five times more likely to suffer from other unintentional injuries.⁵

In New York State, underage drinking cost residents \$3.5 billion in 2007. An estimated 912,000 underage youth drink each year. 49 percent of New York State high school seniors versus 42 percent of youth nationally have used alcohol in the last 30 days. 31 percent versus 25 percent reported binge drinking.⁶

The market for underage drinking is substantial, and it is dominated by binge drinking. Underage

¹ U.S. Surgeon General. Press Release: Acting Surgeon General Issues National Call to Action on Underage Drinking. Available at <http://www.hhs.gov/news/press/2007pres/20070306.html>. Accessed on April 7, 2011.

² Substance Abuse and Mental Health Services Administration (SAMHSA). *National Survey on Drug Use and Health*. Rockville, MD: Office of Applied Studies, 2009.

³ Calculated using the 2003 National Survey on Drug Use and Health. J. Gfroerer of the Substance Abuse and Mental Health Services Administration, e-mail to David H. Jernigan, PhD, 14 September 2004.

⁴ Grant BF, Dawson D. Age of onset of alcohol use and its association with DSM-IV alcohol abuse and dependence: Results from the National Longitudinal Alcohol Epidemiologic Survey. *Journal of Substance Abuse*, 1997; 9:103-110.

⁵ Hingson, R., Zha, W. Age of Drinking Onset, Alcohol Use Disorders, Frequent Heavy Drinking, and Unintentionally Injuring Oneself and Others. *Pediatrics*, 2009; 123: 1477-1484.

⁶ Advisory Council on Underage Alcohol Consumption-Annual Report, 2009. Office of Alcoholism and Substance Abuse Services.

drinking accounts for between 11 and 20 percent of the U.S. alcohol market. In New York, it accounted for 17 percent in 2007.⁶ Binge drinking comprises greater than 90 percent of the alcohol intake for 12- 20-year-olds.⁷ The Federal Trade Commission recognized in 1999 that alcohol advertising is a risk factor in youth drinking, writing that, “while many factors may influence an underage person’s drinking decisions, including among other things parents, peers and media, there is reason to believe that advertising also plays a role.”⁸ Since 1999, the evidence has grown much stronger, as at least 13 longitudinal studies that followed young people over a number of years have released their results. These studies have found that youth exposure to alcohol marketing on television,^{9,10,11} in magazines,^{9,11} via in-store beer displays and beer concessions, on the radio,^{9,11} on billboards⁹ or other outdoor signage,¹² or via ownership of beer promotional items¹¹ or branded merchandise were more likely to start drinking or, if already drinking, to drink more. In fact, youth who own a t-shirt, Frisbee, hat or other branded merchandise are 50 percent more likely to initiate than those who do not.¹³

The Center on Alcohol Marketing and Youth was founded in 2002. Our philosophy is that reducing underage drinking requires a two-pronged public health approach: first, to reduce young people’s access to alcohol; and second, to reduce the appeal of alcohol to young people. Reducing the appeal is achieved by providing public health messages about alcohol and underage drinking, and limiting the impact of alcohol advertising on youth by reducing exposure to it. Given that alcohol advertising is a risk factor for underage drinking, CAMY tries to answer the question: how much alcohol advertising do kids see? We track alcohol advertising on TV and radio and in magazines using standard industry sources such as Nielsen and Arbitron to measure the audiences for that advertising. Our studies show over and over again that youth are exposed to more alcohol advertising per person than adults.

In 2008, compared to adults 21 and over, youth ages 12-20 saw per capita 10 percent more beer ads, 16 percent more ads for alcopops, and 73 percent fewer wine ads. The overwhelming majority of youth exposure-78 percent-came from ads placed in magazines with disproportionate youth audiences.¹⁴

⁷ OJJDP. "Drinking in America: Myths, Realities, and Prevention Policy
http://www.udetc.org/documents/Drinking_in_America.pdf

⁸ Federal Trade Commission. *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers*. Washington, D.C.: Federal Trade Commission, 1999.

⁹ Snyder L, Milici F, Slater M, Sun H, Strizhakova Y. Effects of alcohol exposure on youth drinking. *Archives of pediatrics and adolescent medicine*, 2006;160(1):18-24.

¹⁰ Stacy AW, Zogg JB, Unger JB, Dent CW. Exposure to televised alcohol ads and subsequent adolescent alcohol use. *American Journal of Health Behavior*, 2004;28(6):498-509.

¹¹ Collins RL, Ellickson PL, McCaffrey D, Hambarsoomians K. Early adolescent exposure to alcohol advertising and its relationship to underage drinking. *Journal of adolescent health*, 2007;40(6):527-534.

¹² Pasch KE, Komro KA, Perry CL, Hearst MO, Farbaksh K. Outdoor alcohol advertising near schools: what does it advertise and how is it related to intentions and use of alcohol among young adolescents? *Journal of Studies on Alcohol and Drugs*, 2007;68(4):587-596.

¹³ McClure AC, Dal Cin S, Gibson J, Sargent JD. Ownership of alcohol-branded merchandise and initiation of teen drinking. *American Journal of Preventive Medicine*, 2006;30(4):277-283.

¹⁴ Center on Alcohol Marketing and Youth. *Youth Exposure to Alcohol Advertising in National Magazines, 2001-2008*. Baltimore: Center on Alcohol Marketing and Youth; 2009.

Flavored malt beverages (FMBs) or “alcopops” have been described by industry spokespersons as designed for “entry-level drinkers” and those who do not like the taste of beer. Even though most of them have distilled spirits in them, the industry claimed they were made from beer, so that they could be taxed lower, sold in convenience stores, and advertised on TV. Alcopops are fruit-flavored, sugary alcoholic beverages that come in colorful non-traditional packaging. The industry sometimes calls them “malternatives” or “FABs”. On college campuses, they are sometimes called “cheerleader beer” or “chick beer”. The new industry terminology is “progressive adult beverages”. According to the Wall Street Journal, these grossed \$959 million in 2010.¹⁵ The first “alcopops” contained 5-6 percent alcohol and came in 12 oz bottles. A new generation of alcopops (“Binge in a Can”) have up to 12% alcohol and are sold in 16 to 23.5 oz cans and 7-12 oz bottles. These 23.5 oz cans are equivalent to as many as five beers and are sold as single servings.

Alcopops are the most popular with the youngest drinkers. In 2004, 78 percent of current 8th grade drinkers, 71 percent of current 10th grade drinkers, and 65 percent of current 12th grade drinkers drank alcopops in the past 30 days. Only 42 percent of current drinkers ages 19 to 30 drank alcopops in the same time period.

Examples of alcopops include Mike’s Hard Lemonade, Jack Daniels Cola, Bacardi Silver, Zima, Twisted Tea, and Smirnoff Ice. High alcohol flavored malt beverages were born out of a more recent product—the alcoholic energy drink (AED). These combined a much higher alcohol version of an alcopop with varying amounts of caffeine in a 23.5 oz single serving can, and were nicknamed “blackout in a can” due to the effect of the caffeine allowing a person to stay awake longer, drink more heavily, and become drunker than normal.¹⁶ In November of 2010, the Food and Drug Administration issued a statement stating that the addition of caffeine to alcoholic beverages is unsafe and essentially forcing the companies producing them to cease. In response to this, the companies producing the two main AEDs, Four Loko and Joose, reformulated the products without the caffeine and had them back on shelves within 2 months. Anheuser-Busch has repackaged Tilt in a 23.5 oz can and increased the alcohol content to 12 percent.

FMBs, including the new ones, have deceptive packaging that is brightly colored with designs and images similar to non-alcoholic sodas and juices. The advertising is also similar to non-alcoholic energy drinks. They are the most popular with females in every age group. Alcopops are able to maintain an attractive, low price point by avoiding the higher tax rate for spirits. Since they are classified as beer the availability is broadened to convenience and grocery stores and pharmacies. It is much easier for young people to access alcohol in a corner store than it is in a liquor store.

Between 2001 and 2009, the number of alcopop ads on cable TV increased by 143.6 percent. Expenditures on alcopop ads during that same time period increased from \$11.5 to almost \$17.2 million, a 49 percent increase.¹⁴ The marketers of Blast, a new product introduced on April 5, 2011 by Colt 45, have indicated that they have already spent “millions” on the roll out of the beverage. Blast is a new high alcohol FMB and is being marketed by Snoop Dogg, a rap artist popular with young people. Colt 45 has been holding launch parties in multiple cities across the

¹⁵ Kesmodel, D. (2011, March 18) Pabst’s Horse of a Different Color: Colt 45 Enters Controversial Ring. *Wall Street Journal*. Retrieved from <http://online.wsj.com>.

U.S. with Snoop Dogg and other popular DJs and hip hop artists. Guests receive branded merchandise including t-shirts, boxer shorts, and CDs. Blast supposedly “works every time” according to Snoop Dogg and a Colt 45 comic. Blast comes in the huge 23.5 oz cans and 7 oz bottles of 12 percent alcohol. The 7 oz bottles are equivalent to 1.5 regular 12 oz beers.

Legislative actions in other states include Maine and Utah who have reclassified alcopops as distilled spirits. California reclassified alcopops as distilled spirits, but the bill contained a loophole that allowed alcopop manufacturers to reformulate products so they can still be taxed as malt liquor. Vermont recently introduced two bills: the first would ban all sales of flavored malt beverages over 12 oz, and the second would tax alcopops containing greater than 6 percent alcohol at a higher rate than those containing less than 6 percent.

The Center on Alcohol Marketing and Youth supports the State of New York in their actions to develop stronger standards for alcoholic beverages with the passage of Senate Bill 4221. Reclassifying flavored malt beverages as spirits moves them into liquor stores and out of the corner stores where young people may easily access them. It also increases the price, making them less attractive to youth. Because of the severity of underage drinking as a public health problem and the clear attractiveness of this category of beverages to young people, we support this reclassification and we respectfully encourage you to consider applying the new classification not just to alcopops with 6 percent or more alcohol in them, but to the entire category. Thank you very much for the opportunity to testify.

**Written Testimony of
Robert S. Pezzolesi, MPH
CEO - New York Center for Alcohol Policy Solutions
To the New York State Senate
Standing Committee on Alcoholism & Drug Abuse
April 12, 2011**

Good afternoon, Senator Klein and members of the Alcoholism & Drug Abuse Committee. Thank you for the opportunity to speak today about this important public health issue.

My name is Bob Pezzolesi and I lead the New York Center for Alcohol Policy Solutions, a non-profit organization - independent of commercial interests - working to bring about public health, evidence-based alcohol policies in New York State. By *evidence-based* we mean consistent with the best research by the most respected institutions, including the U.S. Task Force on Community Preventive Services¹ and the Institute of Medicine.²

Our primary initiative is the New York Alcohol Policy Alliance (or NYAPA), a statewide coalition whose members include the Council on Addiction of NYS, many of its member councils, drug-free coalitions, other community coalitions, public health and human services organizations, and individuals.

I am also speaking today on behalf of the New York State Public Health Association and its many members, including nurses, physicians, educators, and others dedicated to improving the health of New Yorkers.

And, make no mistake, alcohol is a public health issue in New York State. Alcohol consumption is the third leading root cause of death in the US,³ and an even greater cause of morbidity and disability.⁴ It is also the number one preventable cause of birth defects and intellectual disabilities.⁵

As you are well aware, an especially problematic category of alcohol beverage is that of **alcopops** - fizzy, starter drinks that have been dubbed "alcohol in disguise" because their added sweeteners and other flavors mask the taste of alcohol.

Alcopops are designed, packaged, and marketed to be appealing to kids,⁶ with several surveys over the past decade finding that teenagers are much more aware of these drinks than adults and are much more likely to have to have tried them.⁷ The 2009 national Monitoring the Future survey found that 53% of high-school seniors had consumed alcopops within the previous year.⁸

Research commissioned by the American Medical Association found alcopops to be the favored alcoholic drink of teenage girls,⁹ while another study found that underage drinkers reported that alcopops were easier to acquire and easier to conceal than other forms of alcohol, and that their popularity skewed toward younger teenagers.¹⁰

Furthermore, alcopops should rightly be classified as a distilled spirit product rather than a beer, since - according to the US Tax and Trade Bureau - their alcohol content and flavoring comes largely from distilled spirits.¹¹ This makes Senator Klein's proposal to move the high-alcohol versions of these drinks to liquor stores all the more appropriate.

Which brings us to today's topic, this latest generation of extreme alcopops.

When the manufacturers of Four Loko, Joose, and the like jumped into the alcohol energy drink market, they soon started ramping up the alcohol content, and the container size. By doing so, they made it clear that they embrace a kind of scorched earth business model, with no concern for the public health and public safety impacts of their products.

The big brewers followed suit with their alcopops, and joined in what we have described as an *alcohol arms race* - with our young people and their families as the ultimate victims.

Let's be clear here: we're not talking about Pinot Noir, single-malt scotch, or honey wheat lager. These extreme alcopops are engineered for abuse. One 23½ ounce can at 12% alcohol contains between 4.6 and 5.6 standard drinks. They are literally a binge-in-a-can.

Now the industry has dreamt up the term "progressive adult beverages" for these drinks, which may be the most egregious example of PR weasel-wording in recent memory. Moreover, in this time of austere budgets, we should also consider the acute financial impact of these beverages. Senator Klein and his staff have documented the emergency department visits and poison control cases triggered by these drinks. Emergency room visits and inpatient hospital admissions are very expensive forms of care,¹² as are the costs associated with ambulatory services, law enforcement, and the justice system. And those are just the short-term costs.

For these reasons, we commend and support Senator Klein for his plan to relocate these extreme alcopops to liquor stores.

The public health research of the last few decades is clear: **Reasonable restrictions on access and availability can limit alcohol problems.**¹³

And nothing could be more reasonable than moving these beverages to liquor stores where they will be far less accessible to our youth.

I'll close by saying that we sincerely hope that our conversation today will lead to broader discussions about underage drinking and adult binge drinking in New York State. In some ways this issue is symptomatic of the systemic issues that our coalition is working to address, including the deregulation of our alcohol control system, threats to the three-tier system of alcohol control, and the need for local communities to have a greater voice in their alcohol environment.

Thank you for your willingness to take action on behalf of the youth of our state, and for this opportunity to testify.

Testimony of Detective Frank Kolarik before the New York State Senate Committee on Alcoholism and Drug Abuse

Tuesday, April 12, 2011

Good afternoon. I'd like to thank Senator Klein and the committee on Alcoholism and Drug Abuse for the opportunity to testify here today on this important topic.

I am Frank Kolarik, a Detective for the Town of North Castle Police Department. I am the President of the Westchester County Youth Officers Association, a Past President and current board member of the State of New York Police Juvenile Officers Association, and a former New York State Coordinator for the DARE Program. I have been a police officer for more than 18 years, and have been a Youth Officer for the past 14 years. I am also an adjunct professor of juvenile delinquency.

As a youth officer, dealing with the issue of substance abuse among young people has been an important component of my job. I've spent many hours enforcing the laws, educating young people, and interacting with the juvenile justice system. Despite my efforts, and the efforts of police officers throughout New York State, we are unable to eliminate the problem of underage drinking. Is there something more we can do?

Although the laws concerning underage drinking are clear, young people continue to acquire alcoholic beverages. Despite our efforts to take criminal action against individuals and establishments that sell alcohol to minors, these same establishments continue to do so repeatedly. Any police officer can share stories of the parties he or she has broken up. These same officers can also share stories about young people being transported to the hospital for alcohol poisoning – young people not realizing how much alcohol they have actually consumed. The higher alcohol content of some popular beverages today has compounded this problem.

Enforcing the law is, of course, an important part of any police officer's job. However, as youth officers, we also strive to help young people to make good decisions from the beginning through prevention programs, both inside and outside the classroom. However, substance abuse prevention is an uphill battle. Throughout my career, I have spent countless hours in classrooms informing students, from elementary school through high school, about the dangers of abusing alcohol. These students hear the message repeatedly. They can even identify the dangers and the harmful effects of abusing alcohol. In fact, the New York State curriculum requires that they receive this message. Does this mean that they won't abuse alcohol themselves? What are the other influences in a young person's life telling them?

Although young people repeatedly hear the message about the dangers of alcohol abuse, they are also repeatedly bombarded with contradictory information. They see alcohol use glamorized in popular culture; on television and in the movies. They see alcohol advertisements practically everywhere they look. They see alcohol being used and/or

abused by their family members and friends. To complicate the issue further, our society has now become enamored with health, sports and energy drinks; sweet tasting beverages in flashy packaging boasting the ability to increase energy and stamina. These beverages are now commonplace on any high school or college campus. Now, with the addition of high alcohol flavored malt beverages, we have to contend with beverages offering a combination of both of these influences.

I remember growing up many years ago and first experimenting with alcohol. I remember trying beer and thinking how bad it tasted. I remember trying mixed drinks and not caring for them very much either. In fact, it was a bit of a challenge to find any alcohol that actually tasted good to me. As kids, we were more or less limited to the alcohol that we had access to – usually that found in our own homes. If I had access to the array of alcoholic beverages available today, I imagine that I would have drunk significantly more than I actually did.

Throughout my career, I have also become intimately familiar with the juvenile justice system. The fact that we even have a juvenile justice system tells us something about how we view young people. Young people are poor decision makers. They are immature. They are impulsive. Even though they've heard how harmful drinking alcohol can be, in the face of peer pressure, out of a desire to fit in, or because of a moment of temptation, they may decide to drink it nonetheless. These young people need supervision and guidance, much of which comes naturally from parents, family members, and schools. However, as public officials, I believe we must ask ourselves what we can do. What is within our ability to control to help these young people? Can we add an element of control to counteract any of these other influences? As a youth officer, I continually ask myself these questions.

I believe that Senator Klein's Bill to reclassify high alcohol flavored malt beverages as a liquor product is a positive step to help control young people's access to these potentially harmful drinks.

Substance abuse prevention and enforcement is an uphill battle, and the community of youth officers throughout New York State appreciates the continued support of our legislators in the continuing struggle against substance abuse by young people.

Thank you for this opportunity to appear before you today.

Christopher Satriale, Chief of Police, Bronxville, NY

Good afternoon, Chairperson - Senator Jeffrey Klein – members of the Committee on Alcoholism and Drug Abuse, staff, and guests. I consider it a great privilege and distinct honor to be invited to speak here today. My name is Christopher Satriale. I am the Chief of Police for the Village of Bronxville in Westchester County. I have been fortunate enough to have held every rank within the Bronxville Police Department during my twenty-three year career and was named Chief of Police in 2007. I am a member of the New York State Juvenile Officers Association as well as the Westchester County Youth Officers Association. I have dedicated a great deal of time during my career to issues that negatively impact our children, and I will continue to aggressively support any cause that will enhance their health and safety.

For many years, our Village has struggled to curb the abuse of drugs and alcohol by minors. In recent years, that struggle has been complicated by the introduction of high-alcohol flavored malt beverages. These beverages all contain 12% alcohol – two and one half times the alcohol content of one beer -- and are commonly referred to as “blackout in a can” and “coke (cocaine) in a can”. The combination of packaging, replete with exceedingly vibrant colors (similar to many iced tea beverages) and an array of fruity flavors available, has resulted in a product that is purchased and consumed primarily by our children. Manufacturers continue to deliberately and, in my opinion, irresponsibly market this dangerous and potentially lethal product with an apparent and wanton disregard for the well being of their target consumers. It has become increasingly difficult, if not impossible, to distinguish between these high alcohol-flavored malt beverages and non-alcoholic energy drinks and iced tea products.

During a two week period in the summer of 2010, my department, which covers a relatively modest-sized village, responded to three calls to provide medical assistance to minors who were suffering from alcohol poisoning after consuming “Four Loko” – a popular high-alcohol flavored beverage which, at the time, also contained a high caffeine content. All three children – 13, 14 and 18 years of age – were transported to the emergency room by ambulance and required urgent medical treatment. Two of the children were found unconscious and likely would have died if not for the immediate medical intervention. The sweet tasting product, containing a potentially lethal combination of alcohol and caffeine, presented a unique problem for my department. I could see that an increasing number of our children were quickly “graduating” from an “occasional experimental beer or two” to daily use of “Four Loko” and other high-alcohol flavored malt beverages. Our Youth Officers are actively involved in our community and continue to hear from our children that they liked the product because it “tasted good”. Our children told us that they gathered and consumed two, three and many times four or more of these beverages without feeling any immediate effects of the alcohol. The caffeine in the product gave them the feeling of being a “wide awake drunk”, while the high alcohol content would soon attack their central nervous system and internal organs, resulting in a loss of consciousness.

"Some health officials say the caffeine hides the effects of alcohol, leading consumers to feel they can keep drinking past the point of intoxication," warned Dr. Mary Claire O'Brien, a professor of emergency medicine at Wake Forest University, as she advised the FDA last year. She further stated that ingesting both substances together is dangerous, saying the combination is far more potent than each ingredient is on its own. "There's a particular interaction that goes on in the brain when they are consumed simultaneously," said Dr. O'Brien. "The addition of the caffeine impairs the ability of the drinker to tell when they're drunk. "What is the level at which it becomes dangerous?" she asked? "We don't know that, and until we can figure it out, the answer is that no level is safe."

Realizing that this potentially lethal product required greater scrutiny, Bronxville Mayor Mary Marvin and I collaborated with Mayor John Fitzpatrick and Police Chief John Costanzo from the Village of Tuckahoe. Additionally, we sought the assistance of Senator Jeffrey Klein.

Senator Klein's response to our problem was immediate:

"The distributors of these drinks are using energy as a disguise to sell alcohol to minors. Plain and simple. Underage drinking is a pervasive and persistent problem that is now exacerbated by the packaging and wide availability of these beverages and it is time to do more to protect the health and welfare of our most vulnerable consumers," said Senator Jeff Klein (D-Bronx/Westchester).

As a result of the mounting pressure from Senator Klein and others, Phusion, the manufacturer of "Four Loko," agreed in December 2010 to stop shipping their product to New York merchants.

The agreement, while a victory for the safety our children, does not go far enough. Phusion immediately began selling non-caffeinated versions of their products and reserved the right to sell the original product in the future.

In a statement released by Phusion at the time, Phusion stated that it "will instead begin selling only non-caffeinated versions of its products." "Phusion reserves the right to apply to resume the sale and distribution of caffeinated alcoholic beverages, including Four Loko, in the state of New York if emerging science, regulatory developments or other relevant changes in circumstances arise. The same applies if other alcoholic beverage companies are allowed to distribute and sell caffeinated alcoholic beverages in New York."

While these products – commonly referred to as “Alcopops” do not contain caffeine, their dangerously high alcohol content, sweet taste and bright packaging continue to pose a significant risk to the health and safety of our children. In fact, only last week, Colt 45 introduced “Blast” – a premium malt beverage that contains 12% alcohol per can – the equivalent of four beers. The company has signed rapper Snoop Dogg to promote this product. An online music video, as well as “Blast by Colt 45” Twitter and Facebook pages, are quickly making a potentially lethal product the most popular drink for minors.

Clearly, it is imperative for law enforcement and government to redouble our efforts and expand our arsenal in a collaborative way as we face yet another challenge in the fight against underage drinking, the dangers of alcohol use and those who deceptively market these dangerous substances. Senator Klein, who remains a partner in our fight, added:

“Alcopops’ like Four Loko- or any other type of these deceptive drinks- are still too easy for teens to get their hands on. It is time for us to take the necessary steps to get these dangerous cocktails off the shelves of convenience stores and bodegas in order to save our teens from any further injury or harm.”

I applaud the efforts of this committee and wholeheartedly support Senate bill S4221 in addition to all future legislation that promotes and insures the health and safety of our children.

When President John F. Kennedy said,

“Children are the world’s most valuable resource and its best hope for the future”

he clearly implied that we have an inherent responsibility to provide guidance and foresight to our youth. Working collectively to eliminate the pitfalls facing our children as well as the concomitant perils of deceptive marketing and advertising is paramount. To be sure, there has already been a great deal of progress made as awareness has been raised. Continued vigilance, however, is imperative if we are to maintain a safe and healthful environment in which our youth may flourish.

Thank you



Testimony

of

Thomas A. Farley, M.D., M.P.H., Commissioner

New York City Department of Health and Mental Hygiene

Before the

**New York State Senate Standing Committee on Alcoholism
and Drug Abuse**

On

High-Alcohol Flavored Malt Beverages

April 12, 2011

**Legislative Office Building
Albany, NY**

Good afternoon Chairman Klein and members of the committee. I am Dr. Tom Farley, Commissioner of the New York City Department of Health and Mental Hygiene. I want to thank you for holding this hearing on a critical public health issue. Excessive alcohol consumption, particularly among underage drinkers, is a long-standing and growing problem, and I appreciate this opportunity to testify.

We estimate that alcohol causes 1,500 deaths a year in New York City, making it the third-leading cause of preventable death in New York City, behind smoking and health problems related to obesity. Many people know that excessive drinking causes liver disease, but people often are unaware how much alcohol fuels traffic accidents, injuries, violence, and suicides, or that alcohol has long-term consequences like raising blood pressure and causing cancer. The problem of dangerous alcohol drinking appears to be getting worse. Recent data show significant increases in alcohol-related emergency department visits in New York City for all age groups over the past several years. One in ten hospitalizations in New York City is alcohol-related. Recent binge drinking was reported by half of underage drinkers and by 42% of adult drinkers.

The New York City Health Department is taking several steps to address the problems of underage and excessive drinking. This past winter, we conducted a media campaign in the subway system highlighting the dangers of excessive drinking. We are also excited about the proposed expansion of a promising program we have been promoting in New York City. The program, called "Screening, brief intervention, referral, and treatment", or SBIRT, in health care settings has proven effective for reducing risky or dangerous alcohol and drug use, and we hope to expand our own successful program for use into private physicians' offices.

We do not think, however, that these programs will be sufficient to address this major health problem. We are particularly concerned about drinking by underage youth, and we believe we should do more to prevent our young people from drinking alcohol.

We are particularly concerned about underage drinking because, in addition to the immediate dangers created by excessive drinking, adolescent drinkers are especially vulnerable to developing longer-term problems with alcohol. In fact, drinking during adolescence can lead to a lifetime of alcohol problems. Two out of five adolescents who begin drinking before the age of 15 will become dependent on alcohol in their lifetimes. One in eight youth between the ages 18 and 20 years old are already alcohol dependent.

And while adolescent drinkers are at greater risk for these longer-term health problems, they are also at least as likely as adult drinkers to experience the immediate dangers of excessive drinking – assaults and violence, motor vehicle accidents, and other accidental, preventable causes of injury and death.

Young people are particularly drawn to drinking by certain types of alcoholic beverages. Flavored malt beverages are premixed alcoholic beverages that are sweet and carbonated, and they have been nicknamed "alcopops". The alcohol content in these beverages ranges from 4% to as high as 14%, making the alcohol content in some of

these products considerably higher than the alcohol content in beer. Furthermore, although alcopops are initiated with malt fermentation, as a brew, the alcohol composition of the final product is not the same as beer. The initial malt brew is only a precursor in alcopops-making – it is subsequently filtered and sweetened flavoring is added, sometimes including distilled spirits. In the final product, the sugary flavor effectively masks the alcoholic taste. This makes it easy for children to transition from drinking soda to alcohol.

Surveys tell us that alcopops are more popular among adolescent drinkers. Adolescents are more likely than adults to drink alcopops – more than two-thirds of high school students report drinking alcopops in the past year, in comparison with only a quarter of adults. And among adolescent drinkers, girls and younger underage drinkers show the greatest preference for alcopops.

The way that alcopops are marketed often appears to target underage drinkers. These products are branded with catchy names, and packaged in bright colors and appealing designs. They look very similar to sports and soft drinks. Advertisements for alcopops often appear in youth-oriented media.

Referring to alcopops, one alcohol industry executive was once quoted as saying, “The beauty of this category is that it brings in new drinkers, people who don’t really like the taste of beer.” Another executive was once quoted calling alcopops “the perfect ‘bridging beverage’” between carbonated fruit juices and the new hard lemonades.”

Unfortunately, these bridge beverages are readily available to the adolescents to for whom they are marketed. Alcopops are sold alongside beer, juice, and soda, in grocery and convenience stores. Children and adolescents already frequent these outlets for food, beverages, and household products, increasing their exposure to alcopops. In New York City, more than 20% of public high school students who drink report purchasing or otherwise obtaining their alcohol from retail stores, including delis, grocery stores, and mini-marts. And in areas with a high number of alcohol outlets, retail stores may be more likely to sell to underage drinkers.

Moreover, retail stores selling alcopops are vastly more common than liquor outlets in communities with the greatest health disparities in New York City. Because alcopops are more accessible to youth living in these high disparity areas, youth in these communities are at greater risk for earlier initiation to drinking and the development of alcohol dependence or abuse problems in adulthood.

Legislation

Senator Klein recently introduced legislation to designate alcopops with an alcohol content of 6% or higher as liquor. The legislation makes a great deal of sense. These products are not beer and should not be treated as beer. The legislation would restrict the sale of these drinks to liquor stores, where they can be sold alongside wine and liquor. It would take them out of the grocery stores and delis where underage

drinkers are more likely to purchase them. Passage of this bill would result in 19,000 fewer places – 8,700 in New York City – for kids to buy high-alcohol-content alcopops.

We want to thank and congratulate Senator Klein for introducing this bill, which we see as an important step in the right direction toward protecting our young people from the problems of excessive and underage drinking. However, some of the products that are most popular among underage drinkers have lower alcohol contents, often 5% or 4.5%. They still target children, and can be just as harmful as drinks with slightly more alcohol. Not including these beverages in the bill means preserving underage access to alcopops in thousands of grocery stores, delis, and convenience stores across the state. For this reason, we recommend that Senator Klein modify his bill to include all flavored malt beverages, rather than only those with alcohol contents above 6%. We expect that several public health and child welfare organizations would support a restriction on the sale of all alcopops to liquor stores. Some of these groups are here today.

Making all alcopops less accessible to children will save lives. The Marin Institute estimates that restricting adolescents' access to alcopops in New York State would result in 20,000 fewer incidents of harm annually, including accidents and assaults.

Thank you again for the opportunity to testify, and for your leadership on reducing underage drinking. I would be glad to answer any questions.

**NEW YORK STATE STANDING COMMITTEE
ALCOHOLISM & DRUG ABUSE**

**PUBLIC HEARING
ON
HIGH ALCOHOL FLAVORED MALT BEVERAGES**

TUESDAY, APRIL 12, 2011

**Testimony Submitted By:
Michael E. Rosen
Senior Vice President & General Counsel
Food Industry Alliance of NYS, Inc.**

Chairman Klein, members of the committee, my name is Michael Rosen. I am the Senior Vice President and General Counsel of the Food Industry Alliance of New York State, Inc. The Food Industry Alliance is a not-for-profit statewide trade association representing the interests of all sizes of retail grocery stores. Our members include multi-state chains like Hannaford, Stop and Shop, Pathmark and Price Chopper, New York companies like King Kullen, D'Agostino's and Tops as well as independent grocers many of whom operate under common trade names like ShopRite, C-Town, Met Food, Key Food and IGA as well as some convenience stores.

Let me say at the onset that we appreciate and support your effort as Chair of the Alcoholism and Drug Abuse Committee to remove high alcohol flavored malt beverages from the marketplace. In our view, products like Four Loco are being marketed to young adults. These beverages encourage excessive alcohol consumption by inexperienced drinkers. We support removing them from the marketplace or limiting the venues for sale.

We do, however, have concerns regarding how the definition contained in the bill will affect legitimate beers, including locally brewed craft beers, and the flavored malt beverages that are currently on store shelves and enjoyed by adult consumers of all ages.

Let me note for the record that our members take their responsibilities in preventing underage sales very seriously. Most employ a number of safeguards

including giving SLA approved training to cashiers, employing cash register prompts to request ID, and adopting policies of proofing all purchasers regardless of age. Many stores conduct their own internal compliance buys and maintain a record of the ID presented. They have well lit frontends with security cameras that discourage underage purchases.

Our members are proud of their record in this regard. For example, the DeCicco's, who have five stores in New York, have operated their Pelham store for over 30 years with no underage sales violations. Locally, Price Chopper, which has voluntarily implemented a policy of proofing all purchasers regardless of age, has processed over 6.4 million alcohol transactions within the past two years without a single infraction.

That said, we are concerned with the new definition for "flavored malt beverages." These are defined as "any alcoholic beverage of any name or description that is manufactured from malt, wholly or in part, or from any substitute therefore including, but not limited to liquor, spirit or wine; and containing more than six per centum alcohol by volume and more than one per centum sugar by volume, which is manufactured with the addition of flavorings and other ingredients" including fruits, juices, herbs, nuts and spices. The State Liquor Authority is further empowered to expand upon those alcoholic beverages, which could be deemed flavored malt beverages and additionally include those products "that would appeal to persons under the age of 21 years."

Let me readily admit that while I may know a lot about retail sales, I do not know much about beer chemistry. However, in discussing the beer with industry experts, including local craft breweries with whom our members have long standing relationships, we are advised of the following:

1. Many craft beers, particularly Belgium Ales and IPA's, exceed the six percent alcohol by volume threshold. We are also told that some national flavored malt beverages including Mike's Hard Lemonade have products that exceed the six percent by volume standard.
2. We are advised that sugar is a natural by-product of the fermentation process and that all beer contains more than one percent sugar by volume. For example, one local brewer told us that Pale Ale might start out as a wort (unfermented beer) containing 13.5 percent sugar with the final product having between 2.5 percent and 3.0 percent sugar by volume. Even the

national beers like Miller, Coors and Budweiser exceed the one percent sugar by volume standard.

We are advised that there is no other law in the country that measures beer by sugar content in the final product. This would establish an unknown standard for regulators, breweries, distributors and retailers alike.

3. Lastly, we are told that all beers and flavored malt beverages are flavored in some fashion by their ingredients. Our members have long sold products like Honey Brown Lager made by the High Falls Brewery, Saranac Black Forest by FX Matts and Sam Adams seasonal summer ale, which is brewed with malted wheat, lemon peel and pepper. There are other more recent flavored products in the marketplace like Saranac's Vanilla Stout and Brooklyn Brewery's Pumpkin Ale that we would not want taken from retailers.

The same could be said of traditional flavored malt beverages like Mike's Hard Lemonade, Twisted Tea and Smirnoff Ice most of which contain fruit flavoring.

The standard in the bill of allowing the SLA to expand the restrictions to those products that "appeal to persons under the age of twenty-one" appears to be arbitrary and impractical based upon the wide range of legitimate flavored products of various alcohol levels and sugars that are presently in the marketplace.

We note that craft beers and products like the Saranac variety packs are not likely to appeal to a young adult based upon both the price points at which these products are sold and the sophisticated flavoring of the selections.

In view of the above, we respectfully request the opportunity to work with you and experts in the industry at further refining the definitions contained in the bill. Once again we applaud the intent behind the bill at banning high alcohol beverages aimed at young adults, but wish to further refine the language being proposed.

Thank you for giving us an opportunity to testify.

I will be happy to answer any questions.

**NEW YORK STATE SENATE COMMITTEE ON ALCOHOLISM
AND DRUG ABUSE
HEARING ON HIGH-ALCOHOL FLAVORED MALT BEVERAGES
TESTIMONY OF MARC E. SORINI, McDERMOTT WILL & EMERY LLP
APRIL 12, 2011**

Senators, my name is Marc Sorini, appearing on behalf of the Flavored Malt Beverage Coalition. We agree that certain high-alcohol flavored beers are troubling for the packaging and marketing reasons this Committee already has outlined. We believe, however, that S. 4221 does not propose a workable solution to the problem they present.

Let me start by outlining why certain new beer products are problematic. It is not simply because of alcohol strength. Many beer products – including Belgian-style ales, barleywines, “imperial” IPAs and others – contain alcohol contents in the 6-12% range. Similarly, it is not simply due to sweetness or non-traditional flavors. Many beer products the Committee presumably has no problem with – from Brooklyn Black Chocolate Stout to New Glarus Wisconsin Belgian Red – are sweet and/or fruit flavored. And it is not simply due to a large container size, as many of the products described above come in 22 oz. or 750 ml bottles.

No, we believe what makes certain new high-alcohol beer products problematic is their potential to confuse consumers about the presence and level of alcohol in the product, as well as their apparent overall marketing and sales strategy. These features raise concerns that we share with the Committee.

To address these concerns, S. 4221 creates a new, fourth category of beverage called a “flavored malt beverage.” It then goes on to define flavored malt beverage as “any alcoholic beverage” made from malt, or any substitute for malt: (1) containing more than 6% alcohol by volume; (2) containing more than 1% sugar; and (3) produced from “flavorings or other ingredients, including, but not limited to, fruit, fruit juice or fruit flavor, or herbs, nuts or spices (including, but not limited to, chocolate, licorice or vanilla, or stimulants[.]”

We see too many flaws in S. 4221’s product-centric approach to salvage it. The bill is grossly over-inclusive, casting a wide net over hundreds of beers to address just a few problematic products. Moreover, it would force the SLA into the impossible task of excepting the many non-problematic products caught in the net, a process that would almost surely enmesh the state in multiple litigation proceedings. And ironically, the approach taken by S. 4221 also would prove under-inclusive and leave many opportunities for the introduction of worrisome replacement products.

First, S. 4221 is over-inclusive. As already note, thousands of imported and craft beers exceed 6% alcohol by volume. Similarly, as all beer is fermented from sugars derived from malted barley and other grains, the 1% sugar requirement would likely sweep in a vast number of products. Finally, S. 4221 describes its “flavorings” requirement in an open-ended manner that includes examples that would include a great many products such as “holiday” spiced beers, fruit beers and others.

The bill’s structure makes this over-inclusion particularly worrisome for Coalition members and, indeed, all brewers. In essence, it singles out all products within the “flavored malt beverage” definition for disfavored treatment, while leaving to the State Liquor Authority (“SLA”) the seemingly-impossible task of establishing rules and regulations designed to separate

TESTIMONY OF MARC E. SORINI, McDERMOTT WILL & EMERY LLP

problematic products from all others. The lack of any certainty surrounding those rules and procedures as well as the possibility of any system's future failure leave all brewers with the prospect that a vast swath of products may find themselves within S. 4221's wide net.

A second flaw flows directly from the new duties S. 4221 would foist on the SLA. As written, the grant of rulemaking authority in Section 3 of S. 4221 does not work: For example, many non-problematic products may not contain "small amounts" of flavorings (e.g., fruits) when compared to problematic products, and a great many will not have such materials added during the fermentation process. Similarly, although the bill directs the SLA to make distinctions based on "colors" and "sweetness levels," we doubt either criteria would provide a sound basis for distinguishing between problematic and non-problematic products. Indeed, in mimicking energy drinks, we suspect some of the problematic products are less sweet than at least some traditional products, such as the fruit-infused "lambic" and lambic-style beers produced in Belgium and by American craftbrewers.

But even leaving aside those flaws, the structure of S. 4221 would force the SLA into the Herculean task of making distinctions based on a variety vague criteria that must apply to all products within the broad "flavored malt beverage" definition. This, in turn, would require the SLA to obtain expertise on beer formulation, styles and the like, hire expert chemists and others to examine beverages, and even retain professional tasters to examine criteria like sweetness levels. As the California Board of Equalization learned in the past few years, this undertaking costs money and resources.¹

Third, any necessarily-amorphous SLA exceptions procedures, rules and/or decisions – however they develop – would invite litigation. Inevitably, any producer with a product that did not obtain an exemption would have a strong incentive to challenge the SLA's decision, procedures and/or rules. Moreover, the structure that S. 4221 would establish – a broad presumptive category subject to exceptions – would mean that any disappointed brewer could likely point to hundreds or thousands of exempted products in arguing that the rules and procedures are arbitrary, capricious and do not provide due process of law.

Not only would such litigation prove expensive and costly to the SLA and the state, we also perceive that it would present a grave danger to our members and all brewers. Because the vague and accordingly vulnerable portion of the statute lies in its exceptions procedure, any judgment enjoining the SLA's activities or striking down the procedure altogether would impose unfavorable distribution and sales treatment on all beer meeting the broad "flavored malt beverage" definition, regardless of the original intent of this bill.²

¹ See Cal. State Board of Equalization Fiscal Year Budget Proposal, debated Sept. 17, 2008 (requesting \$778,000 for FY 2008-09, \$1,171,000 for FY 2009-10, and \$745,000 for FY 2010-11, to administer flavored malt beverage regulations adopted in 2008); Cal. State Board of Equalization Fiscal Year 2009-10 Budget Change Proposal FL No. 3 (Mar. 18, 2009) (requesting \$250,000 for the fiscal year to fund personnel and laboratory services to research industry's reformulation in the wake of new regulations). Ironically, while the state projected California's regulations to raise approximately \$40 million annually, actual collections have never exceeded \$50,000 – far less than the cost to implement the regulations.

² Less spectacular causes for a breakdown in the SLA exemption process similarly could wreak havoc on the industry. As the SLA's own experience has shown, at times agencies simply become too short staffed, under funded
(continued...)

TESTIMONY OF MARC E. SORINI, McDERMOTT WILL & EMERY LLP

Fourth, and ironically given the bill's over-inclusiveness, S. 4221 also suffers from a variety of under-inclusion problems that could allow even the most problematic products to avoid designation as a flavored malt beverage. The Committee surely would agree that a 12% beer in soft drink look-alike packages and priced and marketed in a way to encourage irresponsible and/or youth consumption presents a real problem, regardless of the presence of sugar and/or flavorings. Indeed, by replacing sugar with, for example, a non-nutritive sweetener, producers of problematic products might find it quite easy to avoid the flavored malt beverage category.

In sum, we see S. 4221 as fatally flawed. Instead, we perceive a superior, alternative approach in the SLA's authority over beer labeling under Section 107-a of the Alcoholic Beverages Code.³ The SLA already has used that authority to protect New Yorkers from such problematic products as alcoholic popsicles, and the Court of Appeals has upheld that decision as within the SLA's powers.⁴ We believe a focus on labeling – perhaps combined with a clear grant of authority to consider packaging and other marketing when doing so – keeps the attention where it needs to be. The problematic products that bring us together today are worrisome not primarily because of their alcohol content or taste. Instead, it is their labeling and packaging that resembles non-alcohol products, their use of single-serve formats and low price points, and their marketing thrust that makes them troubling.

Finally, focusing on labeling and packaging – as the SLA did in refusing to approve the “Freaky Ice” popsicle product – gives the SLA the ability to concentrate scarce resources on problem products without the need to rule on a much larger universe of beer that we all agree should continue to be sold in New York. From the industry's perspective, too, this would avoid the troubling prospect of massive collateral damage that could flow from casting as wide a net as S. 4221 proposes.

Thank you for your time and attention.

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or otherwise challenged to accomplish routine tasks such as the issuance of licenses. If such conditions were to arise with respect to the exceptions procedure contemplated by S. 4221, brewers and importers could find themselves in the disfavored “flavored malt beverage” category simply due to an SLA resource problem.

³ See N.Y. Alco. Bev. Laws § 107-a(1) & (2).

⁴ See *In the Matter of Integrated Beverage Group Ltd. v. New York State Liquor Authority*, 6 N.Y.3d 883 (Ct. of App., 2006), affirming *In the Matter of Integrated Beverage Group Ltd. v. New York State Liquor Authority*, 807 N.Y.S.2d 74 (App. Div. 2006).

FLAVORED MALT BEVERAGE COALITION

Testimony before

Senator Jeffrey D. Klein, Chair, Senate Committee on Alcoholism and Drug Abuse;
Senator Shirley L. Huntley, Senator John J. Bonacic, Senator Neil D. Breslin,
Senator Roy J. McDonald, Senator Kemp Hannon

April 12, 2011

Hearing Room A, Legislative Office Building, Albany, NY

Presented by: Greg Altschuh

Administrator, Flavored Malt Beverage Coalition

Chairman Klein and members of the Committee, I am Greg Altschuh and I am testifying on behalf of the Flavored Malt Beverage Coalition at your invitation concerning Flavored Malt Beverages and Flavored Beers. The Coalition's members are City Brewing Company, Diageo North America, Genesee Brewing Company (located in Rochester NY), and Mark Anthony Brands. Our counsel Marc Sorini is with me today. Together, Coalition member companies produce and market the majority of the flavored beers sold in the United States. The terms flavored malt beverage and flavored beer are essentially interchangeable so for ease of reference I will refer to both as "FMBs".

A. What is an FMB?

FMBs, have been around for thousands of years since ancient Egyptians added fruit to their fermentation pots. We know that flavored malt-based products have been sold in the US since the 1950's and in the 60's and 70's included products such as Malt Duck and Champale. The most popular current versions, like the ones displayed here, evolved to a malt beverage base from the wine cooler craze in the 1980's. Typical products consist of a brewed beer base to which flavors and carbonation have been added and contain about the same amount of alcohol as a regular beer – 4-5% alcohol by volume – and are typically packaged in beer container sizes, with the overwhelming majority packaged in 11.2 or 12 oz bottles and are sold in 4-packs or 6-packs. And like many beers, some also are packaged in larger bottles such as 16 oz and 24 oz. These products are flavored beers or flavored malt beverages under federal law and regulations and the laws of nearly every state. They do not contain liquor, like vodka or rum, and in fact it is illegal under federal law to even bring liquor on to the premises of a brewery.

NY law currently treats FMBs as beer for production, distribution, labeling, advertising, trade practice and tax purposes. And like the rest of the country, New York recognizes that there are three fundamental types of beverage alcohol: wine, spirits and beer, based on long established traditions of ingredients, production methods and consumer understanding.

Our coalition companies applaud recent successful efforts by this legislature to continue to curb underage drinking and alcohol abuse in general, including Leandra's Law and your legislation, Senator Klein, which passed last year, that will encourage those who hold a license to sell alcohol beverages and their employees to attend alcohol training awareness programs in a coordinated effort to stem underage drinking and over consumption of alcohol beverages generally. And we encourage the legislature to pass a statewide social host law which is currently been proposed by Senator Fuschillo and would mirror county legislation currently in effect in Albany, Nassau, and Westchester counties.

B. S4221

Less than 2% of our coalition members' total volume of FMBs shipped into or produced and sold in NY would be affected by S4221 since only that very small portion of our members' products contain over 6% alcohol by volume. So why are we here? We are here today because we support reasonable efforts to promote responsible marketing and use of all beverage alcohol products and to work in cooperation with government officials, community leaders, our fellow industry members and the public to discourage underage drinking.

Regarding under aged drinking, despite the significant reductions that have occurred over the past 20 years, it continues to be a complex issue. And we know from studies by both the National Academy of Sciences and the Century Council that most common sources of alcohol for the underaged are parties, friends, adult purchasers and even family members. In fact Teenage Research Unlimited in a study done for the Century Council concluded that 65% of individuals 10-18 who consumed alcohol in the last year obtained it from family and friends. We agree with experts who have studied this that a combination of strategies, including stiff penalties for those who provide alcohol to youths, coupled with public awareness efforts over the role of parents, will best enhance community efforts to reduce underage drinking.

Looking at S4221, we urge that you consider the collateral damage, confusion and unfair results that would likely result from enactment of this bill, which while a well-intentioned initiative, in our opinion is not the best way to address the concerns laid out in the bill memo of support.

C. Additional Concerns about S4221

1. S4221 would enact a sea change in the NY approach to alcohol beverage taxation although this is not mentioned in the bill - and that is changing the tax status of certain malt beverage products and craft beers from the beer rate to the liquor rate. The only mention of this is found in one general sentence in the memo in support. Changing the tax status of some, but not all, beer products would be inconsistent with the state's longstanding recognition that it has three tax classifications: beer, wine and liquor and we

suggest merits consideration separate and apart from the issues on today's agenda.

2. Beer products moved from their current off-premise retailers to the package stores would lose the benefit of the "shelf stocker" services provided legally under SLA rules by beer wholesalers in beer outlets but are prohibited for wine and spirits products in package stores. Checking "Best by" dates and rotating perishable products, like beers, are an important activity for the consumer as well as the trade. And enforcing a rule that allows shelf stocking activities in package stores by liquor wholesalers but only for beer products would be a significant enforcement challenges.
3. Moreover, the space limitations that many package stores face would create unhappy choices for many package store retailers who would need to find both storage and shelf and perhaps cold box space for beer products in stores that are already full. Something would have to give, which could mean fewer choices for NY consumers and lost revenue for retailers.
4. And, finally, the fact that two versions of perhaps the same branded product, one under 6% alcohol and the other over 6% alcohol, would be in different stores could lead to both consumer and trade confusion.

D. Next Steps Forward

We respectfully submit that a way forward would be a carefully crafted grant of authority to the State Liquor Authority to address what we think is the underlying need – application of a reasonable person standard to preventing products of whatever alcohol content that are packaged or labeled and or advertised or marketed in a manner that makes them resemble soft drinks, energy drinks and similar non-alcoholic beverages from even getting into trade channels in this state. And we believe that its possible to prevent introduction into the state of products that are packaged such that their alcohol content coupled with their being in a single serve container size exceeds a reasonable, objective standard.

Like national trade associations such as DISCUS and the Beer Institute have done as part of their efforts to self-regulate their industry's advertising and marketing, the SLA might establish an expert, objective outside panel, including, for example, marketing experts, judges and community leaders to assist it in evaluating the strength, labeling, packaging and marketing of beverages.

In addition, if one of the concerns is that youth are obtaining alcohol products from grocery stores or bodegas by shoplifting or otherwise, merely transferring some products involved to the package stores won't really address the underlying problem as long as other substitutable products remain on the shelves of the original stores. We consider S4221 to be a well-intended but both an unrealistic and unfair solution. That said, we would be happy to work with this body and with the SLA to address the concerns that have prompted the bill.

Thank you.

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PRESENTATION ON ALCOPOPS April 12, 2011

In a brief paper on Alcopops, high sugar content, flavored malt beverages and wine coolers, the Marin Institute said that these sweet, fruity, often bubbly alcoholic beverages are designed for and marketed to youth (ages 12-24). They look just like their non-alcoholic counterparts, and are entering the market with a disturbing frequency. These drinks target youth, but they are particularly attractive to girls and young women because they contain a high sugar content and—in some cases—caffeine content which does a great job of masking the flavor and affect. It has even been suggested by some writers that wormwood, a hallucinogen also found in Absinthe and taurine, a bile that is found in the intestines of most mammals, are present in Four Loko. While taurine has supposedly been removed, wormwood is not one of the substances which were identified as being removed during the period when the manufacturers took the drink off the market to remove caffeine and other substances. In recent years teen girls report drinking alcohol in greater quantities and frequencies than their male peers. The AMA points to the popularity of Alcopops or 'girlie drinks' as a significant factor behind the shift.

Most of these drinks are categorized as beer or 'energy drinks'. Alcopops are taxed lower than other beverages with the same amount of alcohol - they are really cheap (between \$2 and \$3 for a supersized (23.5 ounce) single serving can which was chosen on purpose because it resembles so many 'safe' drinks like Arizona Iced Tea, energy drinks and other similar beverages that contain no alcohol at all while many of the alcopops contain about 12% alcohol - more than beer and many wine drinks), and are easier to buy

because they are sold in convenience stores, gas stations, and mini-marts. Now they are moving into mainstream super-markets, where they will be even more easily accessed. Looking like these non-alcoholic beverages makes it easier for underage youth to get past clerks and sales people without being 'carded' because the sales people do not realize that the youth are purchasing alcoholic beverages.

The availability and use of these beverages is alarming because they are very similar in look and feel to the popular energy drinks that contain no alcohol. And they are being sold everywhere so that youth, sales clerks, and retailers cannot easily differentiate between nonalcoholic and alcoholic beverages they are selling.

Some of these drinks contain caffeine and other stimulants as well as alcohol. Recently, one of these brands stated that they took their beverage, Four Loko, off the market to remove all caffeine. Four Loko is back on the market without caffeine, but, in many places, caffeine is still being found in the drink. Many researchers call these Alcopop drinks 'liquid cocaine'. This is what we are allowing to be made available to the youth; our future.

In spite of all of the risks of alcopops, the increase in sales, the appeal and easy access to underage drinkers, and all of the health concerns involved in mixing stimulants with alcohol, little research has been done on this topic.

What is the problem use of alcohol by underage youth? The research on underage alcohol use abounds with various areas of concern. For example, early use of alcohol interferes with the major changes in brain structure and function that occurs during adolescents. Neural alterations are taking place, particularly in the frontal cortex of the brain that are part of executive and reward systems involved in impulse control and emotional regulation.

Early puberty is another affect of individuals having had only 12 drinks of alcohol by the age of 12 or 13 years old. Research indicates that the early use of alcohol causes changes in the physical development of youth who have had 12 or more drinks of alcohol before they are 12 or 13 years old are more likely to have a more advanced pubertal stage for their age, with all of the implications early puberty may entail.

But even more serious data is coming out. We have known for years that early onset of alcohol and drug use can cause other physical and, also, emotional development issues such as the following:

1. Early alcohol use is associated with smaller body size and brain size, causing physical and emotional development problems. Early involvement in sexual activities, and all of the problems that entails, is linked to the use of alcohol at younger ages.
2. Early alcohol use interferes with stages of development that include learning to delay gratification, being able to handle rejection, and learning

to live with and accept not getting your way on everything. Once the stage of development for these and other stages of growth pass, developing these skills becomes nearly impossible, so we have more young adults unable to delay gratification or work toward something meaningful that takes time to accomplish. Fewer youth and young adults are able to manage their anger if they don't get their way, or organize and structure their lives to accomplish something meaningful and useful.

3. The literature indicates that alcohol use before 16 or 17 years of age almost guarantees a lifetime struggle with alcoholism and alcohol abuse. In a study of 700,000 adolescents between 15 and 17 years of age, more than 52% became alcoholics by the age of 25 and 1.5% were struggling with alcohol abuse issues that indicated they would probably have trouble with alcoholism in the future.
4. Early alcohol use is linked with the use of other drugs, e.g., the use of marijuana at an early age. Marijuana use in adolescence is linked to early development of schizophrenia and other psychotic disorders.
5. Early alcohol use which is fostered by the easy availability of Alcopops for youth interferes with academic activities and makes it difficult for youth to learn, and to sustain the required commitment to education necessary to get through high school, let alone college and graduate training. Families of these children will more likely be impoverished, uneducated, and traumatized by the co-occurring events (sexual abuse, family violence) to go along with alcoholism.

The World Health Organization (WHO) has clearly stated that alcohol is the most dangerous drug we use. Across the world the disease of alcohol addiction is responsible for 4% of deaths, more than AIDS, violence or tuberculosis. And alcoholism is closely linked with violence, sexual abuse, and the destruction of families. Alcohol is a 'causal factor' in 60 types of diseases, and is associated with many serious social issues, including violence, child neglect and abuse, and absenteeism in the workplace. Alcohol consumption in the US is 1.5 times higher than the rest of the world put together.

Youth having easy access to Alcopops is impacting our future, because our youth are our future, and if they continue to have easy access to alcohol at their young age at the rate they are using them today, they will not be able to develop self-control skills, they will be involved in behavior that can be life challenging or life threatening, and they will not be able to develop into the leaders and 'doers' we all want to see them become.