Special Report

STATUS OF STATE CAMPAIGNS TO RESTRICT THE AVAILABILITY OF ALCOPOPS

James F. Mosher, JD
The CDM Group, Inc.
February 10, 2009

I. Introduction and Background

Flavored alcoholic beverages, otherwise known as "alcopops", are sweet, sugary alcoholic beverages that look and taste like lemonade, cola, punch, and tea. The proper classification for alcopops is at issue in most States. These drinks do not fit neatly within the traditional alcohol categories; wine, beer, or distilled spirits. Industry representatives market these products as "malt beverages," and label them as such. This practice offers alcopops the favorable regulatory position of beer, affording the drinks much wider availability and lower taxes.

The Federal Alcohol and Tobacco Trade and Tax Bureau (TTB) issued a report in 2003 that puts the industry classification into question. According to the TTB:

> "[Alcopops] exhibit little or no traditional beer or malt beverage character. … Brewers … remove the color, bitterness, and taste that are generally associated with beer. … This leaves a base product to which brewers add various flavors, which typically contain distilled spirits, to achieve the desired taste profile."[1]*

The production process also removes the alcohol derived from beer and substitute distilled spirits. The industry uses this complex production process for a single purpose: To gain the regulatory advantages associated with beer – lower taxes and greater availability. In other countries that have differing licensing and taxation structures, the manufacturers produce the same product using a distilled spirit base and dispense with the charade of starting with beer and then removing all of the beer's characteristics before adding distilled spirits.

The TTB, after eight years of review, issued a final ruling on the classification of alcopops in January 2005, adopting the so-called 51/49 standard.[2] Under Federal law up to 49 percent of the alcohol in alcopops could be derived from distilled spirits. Potential public health impacts of the regulatory decision were not addressed, nor did the TTB address the conflict between its ruling and an earlier interpretation by this agency, then a division of the Bureau of Alcohol, Tobacco, Firearms and Explosives, charged with regulating alcopops. Issued in 1996, that interpretation

---

[1] Federal Register/Vol. 68, No. 56/Monday, March 24, 2003/Proposed Rules http://www.ttb.gov/alcohol/rules/index.htm.
[2] Flavored Malt Beverage and Related Regulatory Amendments, 70 Federal Register 1 (January 3, 2005) (codified 27 CFR Parts 7 and 25).
* Copies of documents referenced in this report are available from the author upon request.

concluded that alcopops that contained distilled spirits additives should be classified as distilled spirits: "A malt beverage under the Federal Alcohol Administration (FAA) Act may only contain alcohol which is the result of alcoholic fermentation at the brewery."[3]

The TTB ruling applies only to the classification of alcopops under Federal law. Under the 21st Amendment to the Constitution, States have independent authority and responsibility to classify alcohol products. Most States have enacted their own classifications for beer, wine, and distilled spirits that are distinct from the Federal definitions. The TTB itself acknowledged that its 51/49 ruling conflicts with State laws and that the States would have to determine independently whether to adopt the Federal standard. According to one research study, conducted in 2005, at least 29 States had classification laws at the time of the report that require alcopops to be classified as distilled spirits.[4]

The conflict between Federal and State laws has caused controversy at the State level. Attorneys General in at least four States (California, Connecticut, Maine, and Virginia) have concluded that alcopop producers are violating State laws by marketing alcopops as beer. In response, alcopop producers have embarked on an intensive lobbying campaign to convince States to adopt the Federal standard. Public health, youth advocacy, and law enforcement groups have urged State Alcoholic Beverage Control agencies and alcohol taxing agencies to enforce State classifications and treat alcopops as distilled spirits. They argue that the alcopop producers should not be allowed to violate State laws and evade State taxes particularly in light of the health and safety risks alcopops pose for young people and the dire fiscal crises facing most States. This report summarizes State activities to date.

---

[3] ATF Rul. 96-1 (March 1996).

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

II. Public Health Campaigns to Reform State Alcopop Regulatory Policies

Summary

Campaigns are occurring across the country to classify alcopops as distilled spirits or to create a new category of alcoholic beverages that would raise the tax and restrict the availability of alcopops to youth. Three States have reclassified the products through either regulatory or legislative change. Maine has successfully enforced State law despite industry opposition, and alcopops are classified as low-alcohol distilled spirits in that State. In California, the Board of Equalization, the State taxing agency, voted to classify alcopops as distilled spirits for taxation purposes in 2007. Regulations went into effect October 1, 2008, but alcopop producers took advantage of a loophole that has at least temporarily delayed reclassification and have sued to invalidate the regulations. Utah adopted legislation in 2008 to classify alcopops as distilled spirits. California, Illinois, and Utah have also enacted legislation to require new labeling on alcopop containers to insure that they are more easily distinguishable from non-alcoholic beverage containers. At least five additional States – Arkansas, Connecticut, Nebraska, New Mexico, and Vermont – have taken concrete steps toward distilled spirits classification, and several other States (not included in this report) are actively reviewing the issue.[5]

Arkansas

Arkansas' Bureau of Legislative Research issued a report on May 23, 2008, concluding that alcopops should be taxed as "light spirituous liquor" and not beer under Arkansas law, which would result in the tax on alcopops increasing from $.20/gallon to $.50/gallon.[6] The Statewide Task Force on Substance Abuse Prevention promoted a change in classification of alcopops to distilled spirits at an informational legislative hearing October 19, 2008.[7] The proposal is expected to be considered at both a legislative and regulatory level in 2009.

California

In May 2005, California Attorney General Bill Lockyer wrote to the California Board of Equalization (BOE), which sets State alcohol taxes, and the California Alcohol Beverage control (ABC) Department, which regulates the physical availability of alcoholic beverages.[8] His letter concluded that State law requires that alcopops be classified as distilled spirits instead of beer. Despite the opinion of the State's chief law enforcement officer, neither agency initially took any action. In response to the Attorney General's opinion, in August 2005 alcopop producers introduced Assembly Bill 417. This law would have changed California law to follow Federal law in classifying alcopops as a beer instead of a distilled spirit. The California Coalition on Alcopops and Youth ("the Coalition") formed to oppose AB 417. This bill passed the legislature using a "gut and amend" process at the end of the legislative session, but it was vetoed by the Governor on October 2005, responding at least in part to the Coalition's grassroots campaign.[9]

---

[5] An exhaustive review of activities in all States was not conducted, so this list may not be complete.

[6] State of Arkansas, Bureau of Legislative Research, *Taxation of Alcopops*. Legal Research and Drafting Memorandum, May 23, 2008.

[7] Moritz, R. Panel recommends restricting sale of sweetened alcoholic beverages. *The Morning News*, October 20 2008.

[8] Letter from California Attorney General Bill Lockyer to Dennis Maciel, Chief, California State Board of Equalization, May 24, 2005.

[9] Governor Schwarzenegger's AB 417 Veto Message (October 17, 2006).

The Coalition then organized and implemented a statewide campaign that includes legislation, litigation, and media advocacy. In 2005 and 2006, the campaign highlights included lawsuits filed against the ABC Department and the BOE. In support of the Coalition's efforts, these cases were undertaken on a pro-bono basis by the San Francisco law firm of Renne Sloan Holtzman & Sakai. Both the State Court of Appeals and State Supreme Court dismissed the writ of mandamus suit against the ABC Department on jurisdictional grounds without granting a hearing on the merits. On November 15, 2006, with Santa Clara County as the lead plaintiff, the Renne firm filed a lawsuit against the BOE for the misclassification of alcopops as beer instead of distilled spirits.

In the fall of 2006, the Coalition developed a new strategy to focus outreach. Four young people from California's Friday Night Live Partnership and the California Youth Council filed a petition with BOE, requesting the distilled spirits classification.[10] Young people representing these groups met with each BOE member to explain the issue. After the testimony of youth leaders at a hearing in December 2006, the BOE voted 3-2 to institute a process to reconsider the current classification. After a lengthy review, the board voted to adopt the proposed regulations in two separate votes, in August and November 2007. [11] The new rule increases the tax rate for alcopops from $.20/gallon to $3.30/gallon, with an anticipated annual revenue increase of approximately $40 million. Under pressure from alcopop producers, the BOE exempted products that obtained less than .5 percent of its alcohol from distilled spirits (the ".5 percent distilled spirit loophole"). This was in response to industry arguments that some traditional beers contain trace amounts of distilled spirits flavorings.

The new regulations went into effect October 1, 2008. Prior to their effective date, the BOE published a list of all products claiming to be exempt because they have been reformulated to fit the .5 percent distilled spirit loophole. Virtually all alcopops are included on this list.[12] The producers now claim that all of the products have been reformulated even though they had argued to TTB in 2005 that such a reformulation would be prohibitively expensive and would adversely affect the products' taste (i.e., would become bitter). The BOE has begun an investigation of this claim, and the coalition is expected to call for a revision of the regulations to close this loophole if the claims are shown to be accurate.

Diageo (the producer of Smirnoff Ice) has also filed a lawsuit in June 2008 against the BOE seeking to invalidate the regulations on a variety of procedural and jurisdictional grounds. The California Superior Court dismissed the lawsuit on January 27, 2009.[13] Diageo is expected to appeal this ruling.

On the legislative front, the Coalition sponsored AB 346 (Beall, Saldaña), which requires a prominent label that States "CONTAINS ALCOHOL" on all alcopop containers. The bill addresses the difficulty that consumers, law enforcement, parents, youth, teachers, and clerks

---

[10] Petition letter from FNL, S.M.A.C.C., and CYC to California BOE (October 25, 2006).

[11] The regulations are posted on the BOE website at: http://www.boe.ca.gov/meetings/regulations.htm (accessed January 10, 2008).

[12] The list is available at http://www.boe.ca.gov/sptaxprog/pdf/product_list.pdf.

[13] *Diageo Guinness USA, Inc. v. California State Board of Equalization*, Order granting Summary Judgment. Superior Court of California, Department 54 #2008-00013031-CU-JR, January 27, 2009.

report having in distinguishing alcopop and non-alcoholic beverage containers. The California legislature passed the legislation and Governor Schwarzenegger signed it in September 2008. It is scheduled to go into effect on July 1, 2009. The impact of the legislation is now in doubt because it provides the same .5 percent distilled spirit loophole as the BOE regulation. Since the industry now claims that alcopops do not contain this level of distilled spirits, the legislation may have little or no application without amending the alcopops definition.

Connecticut

Connecticut Attorney General Richard Blumenthal issued a letter to Connecticut's State taxing agency on October 31, 2006, that concluded that alcopops are properly classified as distilled spirits under Connecticut law.[14] The agency has taken no action to date.

Illinois

The Illinois Alcoholism and Drug Dependence Association (IADDA) launched a campaign to address the popularity of alcopops with young people. IADDA is a statewide organization that represents more than 100 prevention and treatment agencies, as well as individuals who are interested in the substance abuse field. This Association made alcopops the cornerstone topic of its 2007 legislative agenda. To this end, in the fall of 2006, letters were sent on behalf of IADDA to every lawmaker urging him or her to prohibit advertising of alcopops in publications and on broadcasts with large teen audiences.

In support of IADDA's legislation outreach, State Senator Carol Ronen introduced Senate Bill 1625, to prohibit alcopops advertising in a way or location that targets youth. The Chicago Tribune reported on January 26, 2007, that this legislation will be similar to the marketing restrictions applied to tobacco advertising. The bill was enacted during the 2007 legislative session, effective June 1, 2008.[15] In the 2008 legislative session, IADDA spearheaded a successful effort to enact SB 2472.[16] The law, which parallels California's AB 346 legislation described above, requires all alcopop and Alcoholic Energy Drink containers have a prominent label that States "Contains Alcohol." It takes effect January 1, 2009.

IADDA's campaign started in 2005, when representatives approached the Department of Revenue, the State taxing agency, requesting reclassification of alcopops from a beer to a distilled spirit. Attorneys at the Department narrowly interpreted State statutory and case law, deciding that alcopops were classified properly as a beer under State law. Concluding that this reclassification strategy did not have sufficient support with the executive and legislative branches, IADDA made the decision to focus its campaign on the media restriction and labeling efforts for 2007 and 2008, and delay consideration of the classification issue until 2009.

---

[14] Letter from Connecticut Attorney General Richard Blumenthal to Honorable Edwin Rodriquez, Chairman, Connecticut Liquor Control Commission (October 31, 2006).

[15] Ill. S.B. 1625 (2006). For additional information see Illinois Governor's press release: Gov. Blagojevich signs law to protect teens from 'alcopop' advertising. *Legislation* prohibits marketing of flavored alcoholic beverages to minors, September 17, 2007.
http://wwwb.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=6256

[16] Ill. S.B. 2472 (2008).

Maine

In 2005, the Maine Attorney General issued an opinion concluding that alcopops are low alcohol distilled spirits under Maine law, a conclusion that was confirmed by the State legislature shortly thereafter and enforced effective October 1 2005.[17] As a result, alcopops are taxed at the rate of $1.54 per gallon and available in locations licensed to sell wine. For comparison, beer is taxed at a rate of $0.35 per gallon. The State Attorney General maintains a list of alcopops that must be treated as low alcohol distilled spirits on its website:
http://www.maine.gov/dps/liqr/news/reclassified_beverages.html

Michigan

Public health and safety activists in Michigan have developed two resolutions in November 2008: *Resolution to Properly Classify Alcopops as a Mixed Spirit Drink* and *Resolution to End the Sale of Energy Drink Premixed with Alcohol*.[18] As of February 6, 2009, at least twenty-five organizations from around the State have signed the petitions. The issue of alcopops proper classification is on the Michigan Liquor Control Commission agenda for their March 4 quarterly meeting agenda.

Nebraska

Project Extra Mile ("PEM") is a statewide network of community coalitions in Nebraska whose mission is to create a community consensus that clearly states that underage alcohol use is illegal, unhealthy, and unacceptable. PEM is leading the campaign to enforce Nebraska's law, which requires that alcopops be treated as distilled spirits. The Nebraska Liquor Control Commission issued a preliminary ruling in 2004 reaching that conclusion. However, under pressure from alcohol industry representatives and the State legislature, the Commission stayed implementation pending a review by the TTB at the request of the legislature. After the TTB adopted its new rule, the State Attorney General issued an opinion in 2006 stating that the law in Nebraska regarding alcopops classification was ambiguous, affording the commission discretion to continue treating alcopops as beer.[19] On July 31, 2006, the commission voted to classify alcopops as beer. Opposing this opinion and the decision by the Liquor Control Commission, PEM galvanized support across the State to classify alcopops as a distilled spirit. PEM obtained over 700 support resolutions for the correct classification.

On October 2006, PEM, headed by Executive Director Diane Riibe, along with an Omaha mother and two teenage girls, filed a lawsuit contending that alcopops should be classified and taxed as distilled spirits. PEM coordinated a press conference at the time of the lawsuit filing, generating statewide media coverage. The Liquor Control Commission responded to the lawsuit by filing a motion to dismiss stating that the Plaintiffs had no standing to sue. The Court rejected the Commission's motion. It then remanded the case to the Commission to conduct formal rulemaking, concluding that the Commission had failed to adhere to appropriate procedures in its original decision.[20]

---

[17] *See* 2005 Me. Legis. Serv. Ch. 457.
[18] The resolutions are available at: http://www.michiganalcoholpolicy.org/.
[19] Nebraska Attorney General Opinion No. 06011, July 20, 2006.
[20] *Project Extra Mile & Mary Doghman v. Nebraska Liquor Control Commission & Hobart Rupe*. District Court of Lancaster County, Nebraska Doc. 31 06 No. 3960, January 2007.

In response to the court order, the Commission held a public hearing on July 31, 2008.[21] More than 100 opponents to the Commission's decision to classify alcopops as beer attended, representing diverse public health, youth advocacy, law enforcement, and other constituencies. Extensive press coverage highlighted the opponents' position. Despite this strong showing, the Commission voted on October 23, 2008, to classify alcopops as beer. The coalition opposing the decision has appealed to Governor Heineman and Attorney General Bruning to reverse it. PEM plans to return to court and seek an order requiring the Commission to classify alcopops as distilled spirits if the Governor and Attorney General fail to act.

On the legislative front, Senator Synowiecki introduced Legislative Bill 251 in January 2006, which would have repealed a statute that prohibits bartenders from mixing distilled spirits with beer. Lawmakers disagree about whether this statute also prohibits off-sale licensees from selling beer that is mixed with distilled spirits. On January 22, 2007, the general affairs committee held a hearing to discuss this bill. The only proponent was a representative from Anheuser Busch. Diane Riibe, another parent, and her 16 year-old daughter testified in opposition to this bill. After a heated hearing, the General Affairs Committee went into Executive Session to discuss this legislation, but no vote was taken. The future of the bill is uncertain at this time.

New Mexico

New Mexico Attorney General King announced a legislative proposal to tax alcopops as distilled spirits instead of beer and drafted a "Discussion" bill modeled after the Utah legislation that was presented at an informational legislative hearing on October 20, 2008.[22] Representative Valera subsequently introduced the bill into the legislature as HB 78. The bill was tabled in Committee on February 3, 2009.

New York

New York Governor Paterson's 2009-2010 Executive Budget proposal includes a line item that states: "Standardize tax on Flavored Malt Beverages – Increases the tax on flavored malt beverages to levels consistent with the taxes imposed on other alcoholic beverages" (apparently by classifying them as distilled spirits). The Governor estimates that this standardization will increase annual revenues by approximately $15 million in the 2009-2010 budget year and $18 million in 2010-2011.[23]

Utah

In September 2007, the Utah Alcoholic Beverage Control Commission and with the support of the State Attorney General, voted unanimously to draft a rule to classify alcopops as distilled spirits.[24] Utah law is more ambiguous than most States in terms of the distinctions between beer

---

[21] Public Hearing: Nebraska Liquor Control Commission, Proposed Adoption of Rule 237-LLC1-009 (Classification of Alcoholic Liquor), July 31, 2008.

[22] Associated Press, AG King targets underage drinking. October 21, 2008. Available at: http://www.elpasotimes.com/newmexico/ci_10772262.

[23] New York State Office of the Governor, *2009-2010 Executive Budget Briefing Book*. Available at: http://publications.budget.state.ny.us/eBudget0910/fy0910littlebook/RevenueActions.html

[24] House, D. Flavored alcoholic beverages: Crackdown on malt drinks. Panel wants them out of grocery stores. Salt Lake Tribune, September 29, 2007, p. 1.

and distilled spirits, but the commission and the Attorney General nevertheless determined it had the authority to issue such a rule. Alcopop producers lobbied intensively against the proposed new rule, and the Commission decided in December 2007 to seek legislative review. The Commission forwarded draft legislation to the State legislature to classify alcopops as distilled spirits. SB 211 was introduced in February 2008 to reclassify alcopops as distilled spirits. It was carefully drafted to avoid the .5 percent distilled spirits loophole while still exempting traditional malt beverage products. After intense lobbying on both sides, the State legislature passed the bill and Governor Huntsman signed it into law in March 2008. The new law took effect October 1, 2008, when alcopops will only be sold in State liquor stores, removing them from private grocery and convenience stores and will be subject to significantly higher prices. The bill included new labeling requirements for alcopops similar to the California legislation described above to clearly indicate that they contain alcohol.

Vermont

After reviewing Vermont and Federal law regarding classification as well as the activities on the issue occurring in other States, the Vermont Department of Liquor Control (VDLC) requested that the 2007 Vermont General Assembly mandate a study to determine the best practices for the marketing, sale, and taxation of alcopops. The legislation was subsequently enacted, and the VDLC conducted an extensive study, which was released on January 15, 2009, which included the following recommendations:

1. "A new and unique definition should be created for flavored malt beverages and alcohol energy drinks.
2. Taxation rates, sales, and marketing practices of FMB's and alcohol energy drinks should be considered when creating a new definition or classification for these products.
3. Stricter guidelines and oversight of these beverages should be established and may include, but are not limited to:
   - Requiring that flavored malt beverages and alcohol energy drinks be completely separated from non-alcoholic beverages at all retail locations.
   - Creating a separate tax structure for flavored malt beverages and alcohol energy drinks.
   - Requiring that all packaging be approved by the Department of Liquor Control, prior to distribution within the State of Vermont, with the right of refusal of any products not clearly labeled as containing alcohol.
   - Requiring that all in-state promotional materials be approved by the Department of Liquor Control prior to use."[25]

The Vermont Legislature conducted an informational legislative hearing on February 4, 2009. Advocates for stricter regulation of alcopops and Alcoholic Energy Drinks called on the legislature to take action. In response, Representative Lanpher, announced that she is sponsoring a bill to reclassify the drinks as spirits, which would result in higher taxes and would limit their availability to State-run liquor stores and give the VDLC authority to enact stricter regulations on their marketing and sale.[26]

---

[25]Vermont Department of Liquor Control. *Study to Identify the Best Practices for the Marketing, Sale, and Taxation of Malt-based Beverages Containing Other Ingredients Such as Flavored Distilled Spirits, and "Alcohol Energy Drinks"* January 15, 2009.

[26]Barlow, D. Line between alcoholic, nonalcoholic drinks blurred, lawmakers told. *Times Argus,* February 5, 2009.

III. Industry-Promoted Revisions to State Classification Laws

Summary

At least seven States – Maryland, Minnesota, Missouri, Oregon, Tennessee, Virginia, and Washington – have amended their laws to conform to the TTB definitions. In at least two instances – Maryland and Oregon – the adoption of the Federal rule was in direct response to public health campaigns to classify alcopops as distilled spirits in those States.[27]

Maryland

Two industry-sponsored bills, House Bill 879 and Senate Bill 745, were introduced into the 2008 legislative session that would change the definition of beer to conform to the Federal rule. The House Economic Matters Committee held a hearing on House Bill 879 on February 19, 2008, but did not take any action. Maryland Attorney General Douglas F. Gansler sent a letter to Dereck E. Davis, Chair of the Committee, opposing House Bill 879. The letter Stated in part:

> "I write to oppose House Bill 879. If enacted, House Bill 879 would change Maryland law to treat as beer, for alcohol tax and license purposes, a category of alcoholic beverages commonly referred to as Flavored Malt Beverages (FMBs), Flavored Alcoholic Beverages or Alcopops. FMBs are sweet tasting alcoholic drinks that resemble non-alcoholic beverages like cola, lemonade, iced tea and fruit punch. They are not beer. Under current Maryland law, FMBs are distilled spirits. Changing Maryland law to treat FMBs as beer as proposed by House Bill 879 is bad public policy." [References omitted.]

The Attorney General issued an opinion reaching the same conclusion on March 5, 2008, in response to a request from the Secretary of the Maryland Department of Health and Mental Hygiene.[28] A coalition of public health, child advocacy, and law enforcement groups organized to oppose the legislation, and when it passed, to urge the governor to veto it. Editorials in major newspapers, including the Baltimore Sun and Washington Post, urged the governor to veto.[29] Despite these efforts, the governor allowed the bill to become law without his signature in April 2008, calling on the legislature to revisit the issue in the next legislative session and consider creating a unique classification for alcopops with taxes higher than beer but lower than distilled spirits.

Minnesota

Minnesota changed its law, effective July 1, 2006, to conform to the TTB's ruling.[30]

Missouri

Missouri changed its law on June 1, 2006, to conform to the TTB's ruling.[31]

---

[27] An exhaustive study of all State legislative activity was not conducted, so this list may be incomplete.
[28] *Flavored Malt Beverages*, 93 Opinions of the MD Attorney General March 5, 2008.
[29] Tots, Teens and Safety: Maryland lawmakers have a chance to save some young lives. *Washington Post Editorial*, April 1, 2008; Our view, Governor must veto bill to help keep alcopops from teens. *Baltimore Sun Editorial*, April 29, 2008.
[30] 2006 Minn. Sess. Law Serv. Ch. 259 (H.F. 785) (Minn. Stat. § 297G.01(8a)
[31] 2006 Missouri Laws No. 725 §A. Prior law defined beer in a manner that suggests that it was illegal to

Oregon

Oregon is a control State, so the alcopop classification determines whether they are sold in State stores or in private outlets. The Oregon Liquor Control Commission (OLCC) announced in a letter to industry members dated April 8, 2003, that, based on the March 2003 TTB report, alcopops do not meet Oregon's definition of malt beverages and "therefore cannot be carried in a licensed package store and must be carried in liquor stores." The OLCC announced that the new classification would take effect on January 1, 2004. The decision would have removed alcopops from Oregon's 3,669 private beer outlets and put them into the 240 State-controlled outlets. The industry quickly appealed to State lawmakers, who passed emergency legislation in July 2003 to delay enforcement until December 31, 2004.

Just as the enforcement of alcopops removal was to begin, the TTB issued its final rule in January 2005 stating that alcopops containing not more than 49% distilled spirits would be treated as a beer for Federal classification purposes. In May 2005, the legislature passed a bill that redefined "malt beverages" to mimic the 49% standard created by the TTB.[32]

Tennessee

Tennessee changed its law on June 6, 2005 to conform to the TTB's ruling.[33]

Virginia

Virginia changed its law on April 6, 2005 to the TTB's ruling.[34]

Washington

Washington changed its law, effective June 7, 2006, to conform to the TTB's ruling.[35]

---

manufacture or sell alcopops in the States. Yet no action was taken to enforce the law. The definition Stated: "No person, partnership or corporation engaged in the brewing, manufacture or sale of beer. . .or other intoxicating malt liquor, shall use in the manufacture or brewing thereof, or shall sell any such beer or other intoxicating malt liquor which contains any substance, material or chemical other than pure hops, or pure extract of hops, or pure barley malt, or other wholesome grains or cereals, or wholesome yeast and pure water." MO Ann. Stat. § 311.490 (2005).

[32] 2005 Oregon Laws Ch. 100 (H.B. 3015).

[33] 2005 Tennessee Laws Pub. Ch. 298 (H.B. 1067).

[34] 2005 Virginia Laws Ch. 911 (H.B. 1822)

[35] 2006 Wash. Legis. Serv. Ch. 225 (H.B. 2562).