

**ASSEMBLY BILL**

**No. 346**

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**Introduced by Assembly Members Beall and Saldana**

February 14, 2007

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An act to add Article 4 (commencing with Section 25685) to Chapter 16 of Division 9 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 346, as introduced, Beall. The Prevention of Youth Access to Alcoholic Beverages with Special Appeal to Minors Act of 2007.

The Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the sale and distribution of alcoholic beverages and the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state. The act also provides for specified labeling requirements for containers of alcoholic beverages sold within this state, as provided. Under existing law, it is unlawful for a person to sell, furnish, give, or cause to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years, as provided.

This bill would establish the Prevention of Youth Access to Alcoholic Beverages with Special Appeal to Minors Act of 2007, to prevent underage drinking of, and access to, alcoholic beverages with special appeal to minors, as defined.

This bill would require beer manufacturers and wholesalers to submit specified information to the Department of Alcoholic Beverage Control in order for the department to determine whether that product or brand is an alcoholic beverage with special appeal to minors. This bill would require the department to post an annually updated list of those alcoholic

beverages on its Internet homepage. This bill would provide that information submitted to the department is not a public record and makes findings with regard to that information.

This bill would provide that the containers of alcoholic beverages with special appeal to minors include specified information, including a statement of the alcohol content by volume.

This bill would also prohibit retail licensees who sell alcoholic beverages with special appeal to minors from engaging in specified activities, including displaying those alcoholic beverages within 5 feet of any nonalcoholic beverage and selling motor vehicle fuel.

The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified. This bill, by creating a new crime, would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 4 (commencing with Section 25685) is  
2 added to Chapter 16 of Division 9 of the Business and Professions  
3 Code, to read:

4  
5 Article 4. The Prevention of Youth Access to Alcoholic  
6 Beverages with Special Appeal to Minors Act of 2007  
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8 25685. This article shall be known and may be cited as the  
9 Prevention of Youth Access to Alcoholic Beverages with Special  
10 Appeal to Minors Act of 2007.

11 25686. The Legislature finds and declares all of the following:

12 (a) Problems associated with alcohol consumption by those  
13 under the minimum drinking age of 21 years constitute a public  
14 health and safety emergency in California and the Nation. The  
15 prevention of underage alcohol consumption is therefore an urgent  
16 priority for the people of California.

1 (b) The earlier a young person begins to consume alcoholic  
2 beverages, the more likely it is that he or she will experience  
3 alcohol problems throughout his or her life. Research has shown  
4 that, compared with persons who wait until 21 years of age or older  
5 to begin drinking, those who start to drink before 15 years of age  
6 are at a far greater risk of alcohol problems later in life, including  
7 alcohol-related motor vehicle crashes, assault, and other types of  
8 injuries. Recent increases in alcohol consumption and binge  
9 drinking among underage girls, including girls under the age of  
10 15 years, emphasize the need for new initiatives to prevent youth  
11 alcohol problems.

12 (c) The sale, transfer, or furnishing of alcoholic beverages to  
13 minors and the public possession of alcohol by minors is illegal  
14 in California. Enforcement of laws designed to prevent access and  
15 consumption of alcoholic beverages by minors is an urgent priority  
16 for the state.

17 (d) California and its governmental subdivisions have initiated  
18 numerous programs and public awareness campaigns to prevent  
19 alcohol problems in minors and to alert citizens to the dangers  
20 associated with underage drinking. These efforts, which are  
21 augmented by programs conducted by nongovernmental  
22 organizations and individuals, are not sufficiently addressing the  
23 public health emergency associated with underage drinking.

24 (e) Research has established that exposure to alcohol advertising  
25 influences young people's beliefs and intentions regarding  
26 alcoholic beverages and that increased exposure to alcohol  
27 advertising results in increased underage alcohol consumption.

28 (f) Research has also established that some alcohol  
29 advertisements have images, themes, slogans, and other content  
30 that are highly attractive to young people and encourage them to  
31 consume alcoholic beverages.

32 (g) Alcoholic beverage products that research shows are highly  
33 attractive to young people, including girls under the age of 15  
34 years, are advertised and sold in California. These products,  
35 sometimes referred to as flavored alcoholic beverages or  
36 "alcopops," have added flavorings and sweeteners. "Alcopops"  
37 have a relatively low alcohol content that makes them similar in  
38 taste to fruit drinks, sodas, and other nonalcoholic beverages  
39 popular with young people. Marketing of these products includes  
40 traditional forms of advertising, product placement, labeling, and

1 nontraditional marketing techniques such as text messaging and  
2 Internet promotions, including advertising on Web sites popular  
3 with youth.

4 (h) New alcohol products, in addition to alcopops, that have  
5 potential appeal to young people are being introduced into the  
6 market each year. These include gelatin-based products, food-based  
7 alcohol products, alcohol mists, and beverages that contain alcohol,  
8 caffeine, and other additives that may facilitate underage binge  
9 drinking. Product labeling and packaging in some cases make it  
10 difficult to determine whether these products contain alcohol and,  
11 if they do, their alcohol content.

12 (i) Educators, parents, community leaders, and the public are  
13 not familiar with the types and extent of risks to the health and  
14 safety of California’s young people associated with alcopops and  
15 other new alcohol products with potential appeal to young people.

16 (j) Underage drinking cost Californians an estimated \$7.3 billion  
17 dollars in 2005.

18 (k) In 2005, underage drinkers consumed 12.4 percent of all  
19 alcohol sold in California, totaling \$2.3 billion dollars in sales.  
20 These sales provided profits of approximately \$1.1 billion dollars  
21 to the alcohol industry.

22 (l) The alcohol industry paid \$\_\_ dollars in taxes and licensing  
23 fees in 2005, a small fraction of the revenue and profits received  
24 from alcohol sales derived from underage drinkers.

25 25687. (a) (1) For purposes of this article, “alcoholic beverage  
26 with special appeal to minors” means any alcoholic beverage that  
27 contains additives in proportions that result in a product that  
28 possesses a character and flavor distinctive from traditional malt  
29 beverages, wine, and distilled spirits and that is produced in a  
30 manner that a reasonable person knows or should know will  
31 promote consumption by youth.

32 (2) An “alcoholic beverage with special appeal to minors”  
33 includes, but is not limited to:

34 (A) A prepackaged alcoholic beverage made with gelatin, or  
35 other similar base, and added sweetener intended to solidify the  
36 product into a gelatinous, nonliquid state.

37 (B) A prepackaged alcoholic beverage that contains high levels  
38 of caffeine and other additives and is marketed as an energy drink.

1 (b) Factors that may be considered in determining whether an  
2 alcoholic beverage has special appeal to minors include, but are  
3 not limited to:

4 (1) Added sweetener or sugar substitutes.

5 (2) Added fruit flavors and other flavors that mask the taste of  
6 traditional alcohol products.

7 (3) Coloring, carbonation, and packaging that are similar to  
8 nonalcoholic products that are appealing to and are consumed by  
9 minors.

10 (4) Per capita consumption of the alcoholic beverage by minors  
11 that is higher than the per capita consumption by adults.

12 25688. (a) Beer manufacturers and wholesalers shall submit  
13 to the department information regarding each product and brand  
14 to be distributed in California that is relevant to the determination  
15 of whether the product or brand is an alcoholic beverage with  
16 special appeal to minors.

17 (b) (1) The department shall review all information submitted  
18 to the department pursuant to subdivision (a), and all other  
19 alcoholic beverage products and brands sold in the state, to  
20 determine whether a product or brand is an alcoholic beverage  
21 with special appeal to minors.

22 (2) On or before \_\_\_\_, 2008, the Department of Alcoholic  
23 Beverage Control shall publish a list, available on the department's  
24 Internet homepage and updated on an annual basis, of those  
25 products or brands that the department has determined to be  
26 alcoholic beverages with special appeal to minors.

27 (c) All information and records provided to the department  
28 pursuant to subdivision (a) are confidential in nature and shall not  
29 be disclosed by the department. Information required under  
30 subdivision (a) are not public records under the California Public  
31 Records Act, as described in Chapter 3.5 (commencing with  
32 Section 6250) of Division 7 of Title 1 of the Government Code  
33 and shall not be open to public inspection.

34 25690. (a) In addition to any federal labeling requirements,  
35 any alcohol with special appeal to minors container sold within  
36 this state bear a label that includes the alcoholic content by volume  
37 of the beverage located on the front of the container and the  
38 statement "Warning: Contains Alcohol."

39 (b) This section shall become operative \_\_\_\_\_.

1 25692. Notwithstanding any other provision of law, any retail  
2 licensee engaged in the sale of alcoholic beverages with special  
3 appeal to minors shall not:

4 (a) Display an alcoholic beverage with special appeal to minors  
5 within five feet of any nonalcoholic beverage.

6 (b) Place for sale an alcoholic beverage with special appeal to  
7 minors in a refrigerated cooler or tub.

8 (c) Sell motor vehicle fuel.

9 (d) Place or display self-illuminated advertising for alcoholic  
10 beverages with special appeal to minors in the windows of the  
11 premises or on the interior or exterior walls of the premises.

12 25694. The department shall promulgate regulations and rules  
13 as may be necessary to carry out this article.

14 SEC. 2. The Legislature finds and declares that Section 1 of  
15 this act, which adds Section 25696 to the Business and Professions  
16 Code, imposes a limitation on the public's right of access to the  
17 meetings of public bodies or the writings of public officials and  
18 agencies within the meaning of Section 3 of Article I of the  
19 California Constitution. Pursuant to that constitutional provision,  
20 the Legislature makes the following findings to demonstrate the  
21 interest protected by this limitation and the need for protecting  
22 that interest:

23 In order to allow the Department of Alcoholic Beverage Control  
24 to fully accomplish its goals, it is imperative to protect the interests  
25 of those persons submitting information to the department to ensure  
26 that any business or trade secrets that are required to be submitted  
27 by those persons by this act be protected as confidential  
28 information.

29 SEC. 3. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.

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