



New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

MEMORANDUM IN OPPOSITION

A.9901 by Assemblyman Ortiz

AN ACT to amend the general business law, in relation to
prohibiting the sale of alcoholic energy drinks

The New York Association of Convenience Stores, representing the interests of 5,000 neighborhood convenience stores licensed to sell alcoholic beverages, opposes this bill, which would outlaw the sale of energy drinks containing alcohol in New York.

While well intentioned, this legislation would perpetuate two regrettable traditions of New York regulatory policy – jumping the gun on product restrictions, and chasing customers away from convenience stores.

First, the U.S. Food and Drug Administration is currently in the midst of an investigation of whether caffeine can be safely and lawfully added to alcoholic beverages, evaluating information from manufacturers and other available scientific evidence. It would be premature to act before the FDA issues its findings.

Second, any action restricting the sale of such beverages should be taken by the FDA and applied nationally, not by New York State. Otherwise, the beverages would remain available in neighboring states, giving our customers yet another reason to abandon our stores in search of products we either can't offer or can't price competitively due to exorbitant taxation. We already are struggling to cope with a mass exodus of tobacco and motor fuel customers to untaxed or lower taxed venues. The Governor's proposed beverage tax would only intensify that trend.

The sponsor maintains that caffeinated alcoholic beverages pose a risk to teenagers. However, he fails to note the safeguards that are in place to prevent youth access.

Persons under 21 are not allowed to buy alcoholic beverages in New York. Our stores are required to check the ID of customers wishing to purchase alcohol. Police agencies frequently conduct undercover compliance checks at our stores to detect any underage sale activity. Retailers caught selling to minors face fines and/or license suspension. A customer 21 or older who legally buys alcoholic beverages at a store, and then gives them to minors, is subject to criminal arrest for unlawfully dealing with a child, a misdemeanor.

For the aforementioned reasons, NYACS respectfully opposes this legislation.

James S. Calvin
President, NYACS
June 2, 2010