



# Independent Democratic Conference

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## *Sen. Klein & Public Health Advocates Unveil Plan to Combat Underage 'Alcopop' Abuse*

*IDC Plan Comes Amid Evidence that Minors Continue to Have Access to Four Loko and Similar High Alcohol Drinks*

NEW YORK, NY – State Senator Jeff Klein (D-Bronx/Westchester), chairman of the Senate Alcohol and Drug Abuse Committee, was joined by public health advocates from across New York Sunday to unveil plans to crack down on easy access that minors have to Four Loko and similar high-alcohol malted beverages.

This strategy came as result of recent undercover police stings in New York City, as well as a survey of hospitals and colleges across New York State. The results all showed that these beverages – and their dangerous consequences – continue to be easily within the reach of underage drinkers.

“The results of these investigations clearly show that '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,” Senator Klein said.

“Alcopops,” or High Alcohol Flavored Malt Beverages, are sweetened and flavored malt-based drinks with high alcohol content (Four Loko has a 12 percent alcohol content, while a normal beer generally has a 4 to 5 percent alcohol content.) They are generally sold for \$2 to \$3 for a 22 ounce can, have very similar packaging to non-alcoholic energy drinks, and have a history of being aggressively marketed to minors.

Senator Klein's plan includes:

- **Moving alcopops out of the corner store and restricting their sales to liquor stores**  
Liquor stores, which are more highly regulated, are not frequented by minors, and are the more appropriate place to purchase a product with such a high alcohol content. Senator Klein was introduced legislation (S.4221) to make this change. This measure was draft as Phusion Projects, announced that it would be packaging its High Alcohol beverage FourLoko in bottle form with the specific goal to further increase its presence in grocery and convenience stores. According to the bill, a High Alcohol Flavored Malt Beverage is classified as defined, under this bill, as a beverage with a combination of 6 % alcohol by volume and 1 % sugar that also includes the addition of flavorings. Such flavorings can be fruit juices or fruit flavor additives, or herbs, nuts, or spices, such as chocolate, licorice or vanilla or stimulants such as guarana, ginseng, or taurine.

- **Once and for all banning caffeinated alcopops in New York**

Police recently discovered a caffeinated version of Four Loko – which that Federal Food and Drug Administration has deemed to a public health concern – still being sold in a gas station in Pelham. This is despite an agreement that the State State Liquor Authority secured with Phusion Project to stop selling that version of Four Loko in New York, and a separate agreement that the SLA forged with the state's largest beer distributors to stop selling any alcoholic energy drinks that contain caffeine and other stimulants. Senator Klein has introduced legislation (S.3889) that would make it illegal to sell these caffeinated alcoholic beverages. This legislation is slated to be voted on by the Senate Alcoholism and Drug Abuse Committee on Monday.

- **Holding the first-ever statewide hearing on underage alcopop abuse**

On April 12, at 11:30 am, the Alcohol and Drug Abuse Committee will be holding a hearing on the dangers, rising trend of underage drinking, direct marketing targeting minors, college campus prevalence, law enforcement, and legislation on dealing with alcopops. The goal of the hearing is to raise awareness of the issue and to shape pending and future legislation dealing with the regulation of High Alcohol Flavored Malt Beverages.

"There are a number of alcoholic beverages like Four Loko that are marketed specifically to our youth. These drinks often are the ones that get younger teens started drinking," said New York City Commissioner Dr. Thomas Farley. "When young teens drink alcohol they experience alcohol-related harms and increase their risk for lifetime problems of alcohol dependence or abuse. Senator Klein's bill is an important first step toward protecting our young people from these alcoholic beverages."

Earlier this week, Senator Klein asked the NYPD's Bronx Borough Command to look into whether teens were gaining easy access to alcoholic beverages, including Four Loko and other alcopops in the Bronx portion of the 34th Senate district, which he represents.

Following Klein's request, an undercover investigation was launched in the three principal precincts of his district: the 45th Precinct (serving Throggs Neck, Pelham Bay, Co-Op City, Country Club, Westchester Square and City Island), the 47th Precinct (serving Wakefield and Woodlawn which Klein represents as well as Baychester, Edelwald and Fishkill) and the 49th Precinct (serving Morris Park, Van Nest, Allerton, Olinville, and Pelham Gardens).

The operations were led by the Borough Inspector. An undercover volunteer - under the age of 18 - went into several businesses attempting to buy Four Loko and other alcoholic beverages. Out of the 23 businesses visited, 17 sold alcohol to the minor without asking for ID. The types of locations that were part of the investigation were a combination of bodegas and convenience stores. The breakdown is as follows:

The 45th Precinct investigated 10 stores, 7 were issued violations

The 47th Precinct investigated 7 stores, 5 were issued violations

The 49th Precinct investigated 6 stores, 5 were issued violations

In addition, Senator Klein and the Independent Democratic Conference released the results of a survey taken in the past week of hospitals and law enforcement across New York State regarding incidents involving beverages with high alcohol content.

The results were startling.

In the past week, four minors were rushed to the Elmhurst Hospital Emergency Room in Queens with

alcohol poisoning due as a result of consuming Four Loko and Joose.

On March 17, 2011 - St. Patrick's Day - police were called to an underage party in Eastchester involving the consumption of Four Loko. The survey also unveiled that a gas station supermarket in Pelham is still selling Four Loko in its caffeinated form.

In a third survey of colleges conducted by the Independent Democratic Conference, many campus security officers knew of the beverage, were concerned of the high level of alcohol and had policies in place to deal with not only these products but underage drinking as well.

Since January, Canisius College reported 10 cases involving underage consumption of Four Loko - both on and off campus.

In addition, the University of Buffalo reported a number of 821 alcohol violations in 2009, many included Four Loko, of both underage and of age, in the residence halls. Since January 2011, there have been total of 16 overdoses due to alcohol.

The Independent Democratic Conference also learned through their survey so far this year, the Downstate Poison Control Center has received 7 calls reporting 7 separate cases of people being hospitalized after consuming Four Loko. 5 of those 7 individuals were under the legal drinking age.

"The New York Alcohol Policy Alliance commends Senator Klein for his commitment to the young people of New York State by proposing to greatly restrict access to these sweetened, high-alcohol 'binge-in-a-can' drinks. We believe that this legislation represents an important first step toward protecting our kids from alcopops – highly sweetened 'starter drinks.' We look forward to participating in Senator Klein's upcoming hearings on the matter, so that the people of New York can take effective action to thwart the alcohol companies who are irresponsibly marketing these products to our youth," said Robert Pezzolesi, CEO of the New York Center for Alcohol Policy Solutions.

"Marin Institute applauds Senator Klein's leadership to help get this dangerous products out of the reach of youth. We are seeing a disturbing trend of high-potency, sweetened alcoholic beverages that needs to be stopped," said Michele Simon, Research and Policy Director, Marin Institute.

"Four Loko is clearly marketed to seduce our young people, due to its high sugar content and flavoring. It is not the type of beverage that would be attractive to adults. All underage drinking is harmful, and we are grateful and supportive of Senator Klein's position, in order to protect our youth," said Joan Bonsignore, Executive Director, National Council on Alcoholism and Drug Dependence/Westchester, Inc.

"On behalf of prevention providers and parents, I applaud Senator Klein's efforts to keep kids safe. By taking these dangerous beverages out of convenience stores and supermarkets it will be less likely that a store cashier will mistake them for non-alcoholic beverages and therefore less likely that youth will be able to obtain them," said Ellen Morehouse, Executive Director of Student Assistance Services of Westchester County.

"Moving these 'binge in a can' products from convenience stores to liquor stores makes sense. The Eastchester Communities That Care coalition supports initiatives that keep alcohol out of teenagers' reach," said James Genova, Project Director for Eastchester Communities That Care.



**Independent Democratic Conference**

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# **Alcopops: The Underage Drink of Choice**

**Senator Jeffrey D. Klein and The New York State  
Senate Independent Democratic Conference**

**New York State Senate**

**34<sup>th</sup> Senate District**

**March 2011**



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# SECTION 1: The Rise and Fall of Caffeinated Alcoholic Beverages in New York State



## Underage Sale of CABs to Minors in the Bronx and Westchester

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▪In August 2010, Senator Klein was approached by the Mayors and Police Chiefs of two Westchester towns he represents relaying to him that, in one months time, three local teens had been rushed to hospital emergency rooms after consuming *Four LOKO*. The local police chiefs in conjunction with the Senator's Office conducted an undercover operation which caught local markets selling *Four LOKO* to underage drinkers.

▪Knowing that the undercover operation in Tuckahoe needed to be replicated in other areas, Senator Klein reached out to the Bronx Borough Command of the NYPD to ask for their assistance in seeing how accessible *Four LOKO* was for underage Bronx teenagers. On the night of November 9<sup>th</sup>, the NYPD launched an investigation within the three principal precincts of the Senator's district **on one night**.

Bronx Precinct Area	Locations Visited	Violations for the sale of 4LOKO to a minor
45th	11	4
47th	8	5
49th	9	2
	28	11

**Tuesday November 9<sup>th</sup> 2010**  
**3 Precinct Areas**  
**28 Locations Visited**  
**11 Caught Selling to Minor**

*The method of operation was sending an undercover auxiliary police volunteer who was under the age of 18 -into several local stores and bodegas to buy this drink.*



## Legislative Solutions to the Caffeinated Alcoholic Beverage Epidemic

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Realizing that this was an issue that was not limited to NYC and Westchester, Senator Klein immediately introduced three key pieces of legislation in 2010 to deal with the prevalence of these products in the New York Market.

- S. 8508 (2010) : An act to establish a class E felony for the sale to a minor of an alcoholic beverage containing a stimulant when such sale is made by a licensee of the state liquor authority
- S. 8506 (2010) : An act to shift the point of sale place for certain high caffeinated alcoholic beverages (hereinafter CABs) from grocery and convenience stores to liquor stores.
- S. 8485 (2010) : The purpose of this bill is to expand the State Liquor Authority's (SLA) ability to review the labels of all caffeinated alcoholic beverage containers.

On November 14<sup>th</sup>, 2010 , responding to safety concerns voiced by the Federal Drug Administration, Senator Klein, Governor David Paterson, and the State Liquor Authority, in conjunction with the Retail Beer Wholesalers came to a voluntary agreement to stop the distribution of *Four LOKO* and similar products in NYS.



## Codifying New York State's Commitment to Ban all Caffeinated Alcoholic Beverages

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On November 17, 2010, the FDA issued Warning Letters to four manufacturers of caffeinated alcoholic beverages (Phusion Projects, LLC, United Brands Co., Inc., Charge Beverages Corp., Inc., and New Century Brewing Co., LLC). The FDA's letters warned that the addition of caffeine to those manufacturers' alcoholic beverages has not been approved by FDA and is an "unsafe food additive." All 4 manufactures decided to cease the production of their high alcohol drinks with the inclusion of caffeine.

However, there is no codified ban in the State of New York on caffeinated alcoholic beverages. The agreement made between the manufacturers, the New York State Liquor Authority and the Retail Association is not a ban on future products.

Furthermore, the FDA sent Warning Letters to the above mentioned four manufacturers only. **Other alcoholic beverages containing added caffeine may be subject to agency action in the future if the available scientific data and information indicate that the use of caffeine in those products is not safe.**

What this means is that similar to the New York situation, there is no federal ban on these products door is left open for future manufactures to attempt to enter the caffeinated alcoholic beverage industry. That is why Senator Klein will be passing legislation out of the Senate Alcohol and Drug Abuse Committee that will codify the New York State Agreement on Eliminating Caffeinated Alcoholic Beverages on the shelves of New York retailers:

**S. 3889 Klein / A. 5171 Ortiz: The purpose of this bill is to ban the sale of all caffeinated or stimulant enhanced alcoholic beverages (hereinafter CABs) in New York**



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## SECTION 2: The New Four Loko a.k.a. Alcopops



# The New Market

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Four months after New York State convinced the makers of Four Loko and Joose to pull their products off the shelves, a new reformulated version of the products started appearing in New York. While appearing to have conquered the believed deadly combination of alcohol and caffeine, the new product remains just as dangerous.

These new products, often referred to as alcopops, are still selling at an average of \$2.00 dollars a can and contain the equivalent of three cans of beer. Reports across the country are citing the high level of minors still drawn to these products as the alcohol content remains high and the flavoring and branding maintain its focus on attracting underage drinkers.

On March 18<sup>th</sup>, the makers of Colt 45, Pabst Brewing Company, announced the upcoming release of "Blast", a fruity flavored drink with 12% alcohol. In order to market the product, the company hired rapper Snoop Dogg to be the face of the new drink and scheduled the release on 4/5 to tie into their Colt 45 brand.

With its brightly packaged cans, fruity flavors and low price point, the new version of alcopops with out the caffeine are just as dangerous and deceptive as their predecessor caffeinated alcohol beverages.



## Samples of High Alcohol Beverage Products on the Market



Product	Manufacturer	Size (fl oz)	Alcohol by Volume	Flavors	Price Point
<b>Blast</b> (Not Available until April 5 <sup>th</sup> , 2011)	Pabst Brewing Company	23.5	12%	Strawberry, Lemonade, blueberry, pomegranate, grape, raspberry, watermelon	\$2.50/can
<b>Four Loko</b>	Phusion Project / Drink Four Brewing Company	11.2 bottle 32 can	Bottle: 8% Maxed: 10% Can: 12%	Lemonade, cranberry lemonade, lemon lime, grape, fruit punch, watermelon, orange, blue raspberry	\$2.29/ can  Also available in six and twelve packs
<b>Tilt</b>	Anheuser-Busch	16 or 24	Red: 12% Blue: 11% Green: 10%	Red: Cherry/orange/lime/tropical fruit Blue: Raspberry Green: Lemon lime citrus	\$1.50/can
<b>Joose</b>	United Brands Company, Inc.	12 Bottle 23.5 Can	Bottle: 8.5% Can: 9.9% or 12%	"User Friendly" Bottle: Grape, mango, cherry lime, razlemonade, green apple; Can: lemonade, lime, mango, lemon tea, strawberry, watermelon, fruit punch	\$1.99-2.49 per can  Also available in six and twelve packs
<b>Core</b>	Charge Beverage Corporation	23.5 or 32 cans	12%	Triple berry, strawberry, lemonade, spiked punch, grape, orange	\$2.29/can
<b>Sparks</b>	Miller Brewing/ Steel Brewing Company	16	6, 7, and 8%	Citrus, Fruit Flavor, blackberry, cherry/berry, lemon stinger	\$2.29/can

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## The Dangers of Reformulated High Alcohol Beverages

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- Inexperienced Drinkers can be confused in thinking that one can contains one serving of alcohol.
- One can may actually contain up to six servings of alcohol, such as six beers.
- Alcohol content of this degree is more similar to wine than beer, but unlike wine which is relegated to liquor stores, these high alcohol malt beverages show up in grocery stores, gas stations, and bodegas.
- Beverages of this type are the most rapid expanding sector of the market, becoming more and more prevalent and opening new avenues to become available to youth.
- Youth, particularly girls and young women, are attracted to the sweet flavor which masks the high alcohol content.
- The flashy packaging is also designed to attract the eye of, and appeal to, the younger or under aged drinker.
- As reported by OASAS, "[t]he earlier in life a person starts to drink alcohol, the more likely he or she is to have alcohol-related problems throughout life."



## Cost of Underage Alcopop Consumption in the Tri-State Area

State	Money	Deaths	Incidents of Harm
New Jersey	\$246,820,000	13	9853
Connecticut	\$104,880,000	5	4056
<b>New York</b>	<b>\$548,560,000</b>	<b>24</b>	<b>20,121</b>

- Data compiled and analyzed by the Marin Institute, San Rafael, CA, September 28<sup>th</sup>, 2009
- Money costs reflects the costs (both public and private) of the numerous risks of underage drinking, which include everything from traffic accidents to violent crime, high-risk sex, to fetal alcohol syndrome.
- Harms include traffic accidents, suicides, violence, poisonings and fetal alcohol syndrome, among others.



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# SECTION 3: Investigations and Surveys



# Undercover Investigations March 23<sup>rd</sup> and March 25<sup>th</sup>

Upon the announcement that *Four Loko* is back and a recent Daily News article highlighting its presence on shelves, Senator Klein and the Independent Democratic Conference decided to conduct an undercover operation in conjunction with the NYPD to determine the ease at which minors can purchase alcohol at various markets. The results shown below confirm the belief that the monitoring of underage drinking is not being done by certain local markets. Therefore to have a high alcohol beverage like the ones highlighted in Section 2 of the report (e.g. *Four Loko*, *Joose*, *Tilt*) without the guarantee it will be sold to those of age is dangerous and must be addressed.

Precinct	Area	Number of Locations Visited	Violations for the sale of alcohol to a minor
<b>45th</b>	Throggs Neck, Pelham Bay, Co-op City, Country Club, Westchester Square and City Island	<b>10</b>	<b>7</b>
<b>47th</b>	Baychester, Edenwald, Fishkill, Wakefield, Woodlawn	<b>7</b>	<b>5</b>
<b>49th</b>	Morris Park, Van Nest, Allerton, Olinville and Pelham Gardens	<b>6</b>	<b>5</b>



## Disturbing Facts Revealed in the Survey of College Campuses, Police Departments, Hospitals & Health Related Agencies

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- The Independent Democratic Conference conducted a survey of hospitals and health related agencies across New York State to learn about their experiences with high alcohol beverages. On Wednesday March 23<sup>rd</sup>, the IDC learned that at **Elmhurst Hospital in Queens** just this past week **4 kids** were rushed to the Emergency Room with alcohol poisoning due to *Four Loko* and Joose.
- The Independent Democratic Conference also learned through their survey that in calendar year 2011, the Downstate Poison Control Center has received seven calls to date reporting seven separate cases of people being sick enough to be hospitalized after specifically consuming *Four Loko*. Five of those seven individuals were under the legal drinking age.
- The Independent Democratic Conference also conducted a survey of local Police Captains and Chiefs around NYC and Westchester to determine any police action involving these new high alcohol beverages. On Thursday March 24<sup>th</sup>, the IDC learned that on St. Patrick's Day of 2011 police had to break up an underage party in Eastchester involving *Four Loko*.
- In that same survey by the Independent Democratic Conference of local Police Captains and Chiefs, the IDC learned of a gas station supermarket selling *Four Loko* in its caffeinated form on the shelves in Pelham, New York. The State Liquor Authority was notified subsequently.
- Finally in a third survey of colleges conducted by the Independent Democratic Conference, Since Jan. 2011, at Canisus College in Buffalo, New York 10 cases involving underage consumption of *Four Loko*, both on and off campus, have been reported to date.



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# SECTION 4: Addressing the Issue of High Alcoholic Beverages in New York State



# Limiting Access to Underage Drinkers

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On March 15<sup>th</sup>, 2011 Phusion Projects announced that it will be packaging its High Alcohol beverage Four Loko in bottle form with the specific goal to sell its products in grocery stores and drug stores.

With the announcement of this deliberate attempt to target locations where minors can enter to purchase items, Senator Klein and the Independent Democratic Conference introduced legislation to move these products out of the grocery stores and drug stores into liquor stores.

Shifting the place where these fruit flavored high alcohol beverages are sold from grocery and convenience stores to liquor stores will effectively limit access to such products for underage drinkers. The reason being that persons under the age of 21 can enter into and purchase items in grocery and convenience stores, but cannot enter into liquor stores to purchase any products sold there. Furthermore, minors tend to hang out around convenience stores and have a higher ability to shoplift alcopops or dupe the owners of such locations into thinking they are buying energy drinks or ice tea by concealing the products among such purchases. This would not be the case if fruit flavored high alcohol beverages were exclusively sold in liquor stores.



## S. 4221

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The purpose of this bill is shift the point of sale for high alcohol flavored malt beverages from grocery and convenience stores to liquor stores. High Alcohol Flavored Malt Beverages a.k.a. alcopops are defined, under this bill, as a beverage with a combination of 6 percent alcohol by volume and 1 percent sugar that also includes the addition of flavorings. Such flavorings can be fruit juices or fruit flavor additives, or herbs, nuts, or spices, such as chocolate, licorice or vanilla or stimulants such as caffeine, guarana, ginseng, or taurine. These Flavored Malt Beverages (FMBs) are now being actively marketed to and increasingly used by those who are between the ages of 14 to 25.

- Section 1- This bill amends these terms so that the definition of the term "beer" will exclude Flavored Malt Beverages (FMB's) and shifts FMBS's to be included in the definition of "liquor"
- Section 2: Adds a new definition for the term FMB. Such beverage shall be those types of beverages that are most attractive to underage drinkers and for those under the age of 30. FMB's shall be high alcohol beverages that have over six percent alcohol and over one percent sugar and have added flavors or other ingredients that are attractive to children.
- Section 3: Authorizes the State Liquor Authority to promulgate rules and regulations to further define what is categorized as a FMB that is attractive to children and thus have them treated as a liquor.



## State Wide Hearings on the Availability and Effects of High Alcoholic Beverages

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**On Tuesday April 12<sup>th</sup>, 2011 at 11:30 am** in Albany, New York Senator Klein will be holding his first committee hearing of the legislative session as Chairman of the Alcohol and Substance Abuse Committee.

This Senate hearing will focus on:

- The dangers of alcopops
- The rising trend of underage drinking due to alcopops
- Direct marketing targeting minors regarding alcopops
- The prevalence of alcopops on college campuses
- The increased use of alcopops among high school students
- Law enforcement and alcopops

Additional information regarding testifying at the hearing will be furnished by the Office of Senator Jeff Klein.