

ASSEMBLY, No. 1344

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblywoman MARY PAT ANGELINI

District 11 (Monmouth)

SYNOPSIS

Revises classification of certain malt beverages for alcoholic beverage tax purposes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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2

1 AN ACT concerning the taxation of certain malt beverages under the
2 alcoholic beverage tax law, amending R.S.54:41-2 and
3 R.S.54:43-1.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.54:41-2 is amended to read as follows:
9 54:41-2. As used in this subtitle:

10 "Alcoholic beverages" means liquors, beer, wines and sparkling
11 wine, as defined in this section.

12 "Beer" means beer, lager beer, ale, stout, porter, and all similar
13 fermented malt beverages having an alcoholic content of one-half of
14 one per centum (1/2 of 1%) or more by volume, but does not
15 include flavored malt beverage .

16 "Bonded warehouse" means the warehouse of any licensed
17 manufacturer or licensed wholesaler or licensed warehouseman for
18 which the licensee has given special security to obtain certain
19 privileges given by this subtitle.

20 "Bureau" means the Beverage Tax Bureau of the Division of
21 Taxation in the State Department of the Treasury.

22 "Cider" means a beverage made from the alcoholic fermentation
23 of the juice of apples, including but not limited to flavored,
24 sparkling or carbonated cider.

25 "Commissioner," "State Tax Commissioner" or "Director" means
26 the Director of the Division of Taxation in the State Department of
27 the Treasury.

28 "Container" means the receptacle immediately surrounding the
29 alcoholic beverage and not the carton, box, case, sack, bag or other
30 covering in which such containers may be packed, placed, or
31 transported.

32 "Department," "State Tax Department," or "Beverage Tax
33 Bureau" means the Division of Taxation in the State Department of
34 the Treasury.

35 "Flavored malt beverage" means a beverage having an alcoholic
36 content of one-half of one per centum (1/2 of 1%) or more by
37 volume for which the producer is required to file a formula for
38 approval with the United States Alcohol and Tobacco Tax and
39 Trade Bureau pursuant to 27 C.F.R. s.25.55.

40 "Licensed manufacturer" means any person holding a valid and
41 unrevoked brewery, winery, distillery, or rectifier's license issued
42 pursuant to the provisions of any relevant law of this State.

43 "Licensed transporter" means any person holding a valid and
44 unrevoked license or permit to transport alcoholic beverages
45 pursuant to the provisions of any relevant law of this State.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 "Licensee" means the holder of any valid and unrevoked license
2 or special permit issued pursuant to any relevant law of this State,
3 pertaining to alcoholic beverages.

4 "Liquors" means all distilled or rectified spirits, alcohol, brandy,
5 whisky, rum, gin and all similar distilled alcoholic beverages,
6 including all dilutions and mixtures of one or more of the foregoing,
7 such as liqueurs, cordials, and similar compounds, having an
8 alcoholic content of one-half of one per centum (1/2 of 1%) or
9 more by volume.

10 "Manufacturer" means any person holding a valid and unrevoked
11 brewery, winery, distillery, supplemental limited distillery, or
12 rectifier and blender's license, issued pursuant to the provisions of
13 any relevant law of this State.

14 "Person" means a natural person, an association, a partnership or
15 a corporation.

16 "Plenary retail transit licensee" means any person holding a valid
17 and unrevoked plenary retail transit license issued pursuant to any
18 relevant law of this State, authorizing the sale of alcoholic
19 beverages for consumption only, on railroad trains, airplanes, and
20 boats, while in transit in this State.

21 "Return" means the return of alcoholic beverages by a customer
22 to the source from which such beverages were obtained, upon the
23 cancellation of a sale, and shall include: (a) actual receipt of the
24 beverages on the licensed premises of the source or in a licensed
25 public warehouse for the account of the source; or (b) the sending
26 of the beverages by the customer to another person upon
27 instructions of the source; but shall not include any other
28 disposition, such as samples, breakage, shortage, merchandising
29 credits, or beverages dumped on the premises of the customer,
30 except where such dumping is done under the supervision of the
31 director or his representative.

32 "Sale" means and includes, in addition to its ordinary meaning,
33 any exchange, gift, loss, theft, or other disposition. In every case
34 where alcoholic beverages are exchanged, given, lost, stolen or
35 otherwise disposed of, they shall be deemed to have been sold,
36 unless, in case of loss by fire, proof is furnished to the satisfaction
37 of the commissioner, that the alcoholic beverages have been so
38 destroyed that they could not have been put to any use.

39 "Sparkling wine" means champagne and other effervescent wine
40 charged with carbon dioxide, whether artificially or as the result of
41 secondary fermentation of the wine within the container.

42 "State licensee" means any person holding a valid and unrevoked
43 license or special permit, issued by the Director of the Division of
44 Alcoholic Beverage Control, and who has posted a bond with the
45 director to secure the payment of the alcoholic beverage taxes.

46 "Taxpayer" means a person chargeable with the payment of a tax
47 pursuant to the provisions of this subtitle.

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1 "Transportation licensee" means any person holding a valid and
2 unrevoked license or special permit to transport alcoholic beverages
3 pursuant to the provisions of any relevant law of this State.

4 "Treasurer" means the Treasurer of the State of New Jersey.

5 "Vermouth" means any compound made by the mixture of
6 extracts from macerated aromatic flavoring materials with wines
7 and manufactured in such manner that the product possesses the
8 taste, aroma, and characteristics generally attributed to vermouth.

9 "Warehouse receipt" means a certificate or receipt given upon
10 the storage of alcoholic beverages in a United States custom or
11 United States internal revenue warehouse under federal bond.

12 "Warehouse receipts licensee" means any person holding a valid
13 and unrevoked warehouse receipts license issued pursuant to any
14 relevant law of this State.

15 "Wines" means all wines whether known as "dry wines," "sweet
16 wines," "still wines," or "fortified wines" and any artificial or
17 imitation wine or compound sold as wine, and any fruit juice
18 containing one-half of one per centum (1/2 of 1%) or more of
19 alcohol by volume, and any other beverage containing alcohol
20 produced by the fermentation of the natural sugar content of fruits
21 or other agricultural products containing sugar, which beverage
22 contains one-half of one per centum (1/2 of 1%) or more of alcohol
23 by volume, but shall not mean or include vermouth, or cider
24 containing less than three and two-tenths per centum (3 2/10 %) of
25 alcohol by volume.

26 (cf: P.L.1997, c.153, s.1)

27

28 2. R.S.54:43-1 is amended to read as follows:

29 54:43-1. Tax rates. There are hereby levied and imposed upon
30 any sale of alcoholic beverages made within this State or upon any
31 delivery of alcoholic beverages made within or into this State the
32 following excise taxes:

33 a. Beer--From July 1, 1990 through June 30, 1992, at the rate of
34 \$0.10 a gallon or fraction thereof and on or after July 1, 1992, at the
35 rate of \$0.12 a gallon or fraction thereof.

36 b. Liquors--From July 1, 1990 through June 30, 1992, at the rate
37 of \$4.20 a gallon and on or after July 1, 1992, at the rate of \$4.40 a
38 gallon.

39 c. Deleted by amendment, P.L.1972, c.53.)

40 d. Deleted by amendment, P.L.1972, c.53.)

41 e. Wines, vermouth and sparkling wines--From July 1, 1990
42 through June 30, 1992, at the rate of \$0.50 a gallon and on or after
43 July 1, 1992, at the rate of \$0.70 a gallon; provided however, that
44 cider containing at least three and two-tenths per centum (3 2/10 %) of
45 alcohol by volume but not more than 7 per centum (7%) of
46 alcohol by volume shall be taxed at the rate of \$0.12 a gallon.

1 f. Flavored malt beverages--at the rate of \$4.40 a gallon.
2 (cf: P.L.1997, c.153, s.2)

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4 3. This act shall take effect immediately, provided however
5 that section 2 shall remain inoperative until the first day of the
6 second month following enactment.

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STATEMENT

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11 This bill delineates a new category of malt beverages, “flavored
12 malt beverages,” and imposes the alcoholic beverage tax on those
13 beverages at the rate of \$4.40 per gallon.

14 A growing segment of the alcoholic beverage market is
15 comprised of highly sweetened malt beverage-based drinks with
16 fruit flavors (“hard pink lemonade,” “tropical mango cooler”) or
17 based on other soft drinks (“twisted ice tea”), with the names of
18 popular cocktails (“margarita,” “mojito”), or the newer caffeinated
19 malt beverages (one brand is raspberry-flavored; another brand,
20 with double the alcohol content, comes in melon, chocolate and
21 mango and also contains ginseng and guarana).

22 These “alco-pops” are marketed to younger, inexperienced
23 drinkers and seem to federal regulatory agencies including the
24 federal Alcohol and Tobacco Tax and Trade Bureau (TTB) to be
25 marketed in such a way that special labeling is required to
26 distinguish them from soft drinks and energy drinks. Under current
27 law, these malt beverages are taxed like traditional malt beverages
28 (beer, ale, porter, stout, lager, malt liquor) at the rate of \$0.12 per
29 gallon.

30 By reference to TTB regulations requiring special registration
31 and filing of formulas for malt beverages that because of

- 32 (1) unusual methods of manufacture,
33 (2) the addition of flavors or other nonbeverage ingredients
34 (other than hops or hop extract) containing alcohol,
35 (3) the addition of coloring or natural or artificial flavors or
36 (4) or the addition of fruit, fruit juice, fruit concentrate, herbs,
37 spices, and other flavorings

38 are not generally recognized as traditional beers, this bill defines the
39 category of “flavored malt beverage” as not being “beer,” and taxes
40 it at a separate rate of \$4.40 per gallon, a tax rate equivalent to the
41 current rate on “liquors” (distilled spirits).