

ASSEMBLY, No. 1385

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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SYNOPSIS

Creates new taxable category of alcoholic beverages called flavored malt beverages, imposes separate rate of taxation on new category pursuant to alcoholic beverages tax and allocates associated revenue.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT creating a new taxable category of alcoholic beverages
2 called flavored malt beverages, imposing a separate rate of
3 taxation on flavored malt beverages pursuant to the alcoholic
4 beverages tax and allocating the associated revenue, amending
5 R.S.54:41-2, R.S.54:43-1 and P.L.1990, c.41.

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

9
10 1. R.S.54:41-2 is amended to read as follows:

11 54:41-2. As used in this subtitle:

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

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

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

22 "Bureau" means the Beverage Tax Bureau of the Division of
23 Taxation in the State Department of the Treasury.

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

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

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

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

37 "Flavored malt beverage" means a beverage having an alcoholic
38 content of one half of one per centum (1/2 of 1%) or more by
39 volume for which the producer is required to file a formula for
40 approval with the United States Alcohol and Tobacco Tax and
41 Trade Bureau pursuant to section 25.55 of title 27, Code of Federal
42 Regulations.

43 "Licensed manufacturer" means any person holding a valid and
44 unrevoked brewery, winery, distillery, or rectifier's license issued
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.

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

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

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

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

17 "Person" means a natural person, an association, a partnership or
18 a corporation.

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

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

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

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

45 "State licensee" means any person holding a valid and unrevoked
46 license or special permit, issued by the Director of the Division of

1 Alcoholic Beverage Control, and who has posted a bond with the
2 director to secure the payment of the alcoholic beverage taxes.

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

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

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

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

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

16 "Warehouse receipts licensee" means any person holding a valid
17 and unrevoked warehouse receipts license issued pursuant to any
18 relevant law of this State.

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

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

31

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

33 54:43-1. Tax rates. There are hereby levied and imposed upon
34 any sale of alcoholic beverages made within this State or upon any
35 delivery of alcoholic beverages made within or into this State the
36 following excise taxes:

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

40 b. Liquors--From July 1, 1990 through June 30, 1992, at the
41 rate of \$4.20 a gallon, on or after July 1, 1992 through July 31,
42 2009, at the rate of \$4.40 a gallon and on or after August 1, 2009, at
43 the rate of \$5.50 a gallon.

44 c. (Deleted by amendment, P.L.1972, c.53.)

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

46 e. Wines, vermouth and sparkling wines--From July 1, 1990
47 through June 30, 1992, at the rate of \$0.50 a gallon, on or after July

1 1, 1992 through July 31, 2009, at the rate of \$0.70 a gallon; and on
2 or after August 1, 2009, at the rate of \$0.875 a gallon, provided
3 however, that cider containing at least three and two-tenths per
4 centum (3 2/10 %) of alcohol by volume but not more than 7 per
5 centum (7%) of alcohol by volume shall be taxed at the rate of
6 \$0.15 a gallon.

7 f. Flavored malt beverages--at the rate of \$4.40 a gallon.
8 (cf: P.L.2009, c.71, s.1)

9

10 3. Section 2 of P.L.1990, c.41 (C.54:43-1.1) is amended to read
11 as follows:

12 a. Beginning on July 1, 1992, there shall annually be deposited
13 in the Alcohol Education, Rehabilitation and Enforcement Fund
14 established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32),
15 the sum of \$11,000,000 of the tax collected annually pursuant to the
16 "Alcoholic Beverage Tax Law," R.S.54:41-1 et seq.

17 Amounts deposited in the Alcohol Education, Rehabilitation and
18 Enforcement Fund pursuant to subsection b. of this section shall not
19 be included in calculating the total deposited pursuant to this
20 subsection.

21 b. Beginning on the first day of the second month following the
22 date of enactment of P.L. c. (C.) (pending before the
23 Legislature as this bill), the sum of all tax collected annually on
24 flavored malt beverages pursuant to the "Alcoholic Beverage Tax
25 Law," R.S.54:41-1 et seq. shall be divided in two equal halves for
26 deposit. One half shall be deposited in the Alcohol Education,
27 Rehabilitation and Enforcement Fund established pursuant to
28 section 3 of P.L.1983, c.531 (C.26:2B-32). The second half shall be
29 deposited in the General Fund. If it is impracticable to divide the
30 sum of all tax collected annually on flavored malt beverages
31 pursuant to the "Alcoholic Beverage Tax Law," R.S.54:41-1 et seq.
32 in two equal halves due to the collection of an odd-numbered sum,
33 the nominally larger half shall be deposited in the Alcohol
34 Education, Rehabilitation and Enforcement Fund established
35 pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32).

36 (cf: P.L.1990, c.41, s.2)

37

38 4. This act shall take effect immediately, provided however
39 sections 1 and 2 shall remain inoperative until the first day of the
40 second month following the date of enactment.

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42

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STATEMENT

44

45 This bill creates a new taxable category of alcoholic beverages
46 called flavored malt beverages, imposes a separate rate of taxation
47 on flavored malt beverages pursuant to the alcoholic beverages tax

1 and allocates the associated revenue evenly between the alcohol
2 education, rehabilitation and enforcement fund and the General
3 Fund.

4 Though produced in a manner which incorporates certain aspects
5 of beer brewing, much of the flavoring and alcohol in flavored malt
6 beverages is derived from the addition of distilled spirits. This
7 production process has the effect of creating an alcoholic beverage
8 that is sufficiently beer-like to be taxed like beer, but sold as
9 something else entirely. Alcoholic lemonades, alcoholic colas and
10 cooler-type products are examples of such products.

11 This bill creates a new category of alcoholic beverages entitled
12 flavored malt beverages for purposes of the alcoholic beverages tax.
13 The new flavored malt beverage category is taxed at a rate of \$4.40
14 per gallon to account for its reliance on distilled spirits during the
15 production process. The bill also calls for the proceeds derived
16 from this new category to be allocated evenly between the Alcohol
17 Education, Rehabilitation and Enforcement Fund and the General
18 Fund.