

# SENATE, No. 709

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Prohibits sale of caffeinated alcoholic beverages.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning caffeinated alcoholic beverages, amending  
2 R.S.33:1-1 and supplementing Title 33 of the Revised Statutes.

3

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

6

7 1. R.S.33:1-1 is amended to read as follows:

8 33:1-1. For the purpose of this chapter, the following words and  
9 terms shall be deemed to have the meanings herein given to them:

10 a. "Alcohol." Ethyl alcohol, hydrated oxide of ethyl or neutral  
11 spirits from whatever source or by whatever process produced.

12 b. "Alcoholic beverage." Any fluid or solid capable of being  
13 converted into a fluid, suitable for human consumption, and having  
14 an alcohol content of more than one-half of one per centum (1/2 of  
15 1%) by volume, including alcohol, beer, lager beer, ale, porter,  
16 naturally fermented wine, treated wine, blended wine, fortified  
17 wine, sparkling wine, distilled liquors, blended distilled liquors and  
18 any brewed, fermented or distilled liquors fit for use for beverage  
19 purposes or any mixture of the same, and fruit juices.

20 c. "Building." A structure of which licensed premises are or  
21 may be a part, including all rooms, cellars, outbuildings,  
22 passageways, closets, vaults, yards, attics, and every part of the  
23 structure of which the licensed premises are a part, and of any other  
24 structure to which there is a common means of access, and any  
25 other appurtenances.

26 d. "Commissioner." The Director of the Division of Alcoholic  
27 Beverage Control.

28 e. "Container." Any glass, can, bottle, vessel or receptacle of  
29 any material whatsoever used for holding alcoholic beverages,  
30 which container is covered, corked or sealed in any manner  
31 whatsoever.

32 f. "Eligible." The status of a person who is a citizen of the  
33 United States, a resident of this State, of good moral character and  
34 repute, and of legal age.

35 g. "Governing board or body." The board or body which  
36 governs a municipality, including a board of aldermen in  
37 municipalities so governed; but in every municipality having a  
38 board of public works which exercises general licensing powers  
39 such board shall be considered as the governing board or body.

40 h. "Importing." The act of bringing or causing to be brought  
41 any alcoholic beverage into this State.

42 i. "Illicit beverage." Any alcoholic beverage manufactured,  
43 distributed, bought, sold, bottled, rectified, blended, treated,  
44 fortified, mixed, processed, warehoused, possessed or transported in  
45 violation of this chapter, or on which any federal tax or tax imposed

**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 by the laws of this State has not been paid; and any alcoholic  
2 beverage possessed, kept, stored, owned or imported with intent to  
3 manufacture, sell, distribute, bottle, rectify, blend, treat, fortify,  
4 mix, process, warehouse or transport in violation of the provisions  
5 of this chapter.
- 6 j. "Licensed building." Any building containing licensed  
7 premises.
- 8 k. "Licensed premises." Any premises for which a license  
9 under this chapter is in force and effect.
- 10 l. "Magistrate." The Superior Court or municipal court.
- 11 m. "Manufacturer." Any person who, directly or indirectly,  
12 personally or through any agency whatsoever, engages in the  
13 making or other processing whatsoever of alcoholic beverages.
- 14 n. "Municipality." Any city, town, township, village, or  
15 borough, including a municipality governed by a board of  
16 commissioners or improvement commission, but excluding a  
17 county.
- 18 o. "Municipal board." The municipal board of alcoholic  
19 beverage control as established by this chapter.
- 20 p. "Officer." Any sheriff, deputy sheriff, constable, police  
21 officer, member of the Division of State Police, or any other person  
22 having the power to execute a warrant for arrest, or any inspector or  
23 investigator of the Division of Alcoholic Beverage Control.
- 24 q. "Original container." Any container in which an alcoholic  
25 beverage has been delivered to a retail licensee.
- 26 r. "Person." Any natural person or association of natural  
27 persons, association, trust company, partnership, corporation,  
28 organization, or the manager, agent, servant, officer, or employee of  
29 any of them.
- 30 s. "Premises." The physical place at which a licensee is or may  
31 be licensed to conduct and carry on the manufacture, distribution or  
32 sale of alcoholic beverages, but not including vehicular  
33 transportation.
- 34 t. "Restaurant." An establishment regularly and principally  
35 used for the purpose of providing meals to the public, having an  
36 adequate kitchen and dining room equipped for the preparing,  
37 cooking and serving of food for its customers and in which no other  
38 business, except such as is incidental to such establishment, is  
39 conducted.
- 40 u. "Retailer." Any person who sells alcoholic beverages to  
41 consumers.
- 42 v. "Rules and regulations." The rules and regulations  
43 established from time to time by the director.
- 44 w. "Sale." Every delivery of an alcoholic beverage otherwise  
45 than by purely gratuitous title, including deliveries from without  
46 this State and deliveries by any person without this State intended  
47 for shipment by carrier or otherwise into this State and brought

1 within this State, or the solicitation or acceptance of an order for an  
2 alcoholic beverage, and including exchange, barter, traffic in,  
3 keeping and exposing for sale, serving with meals, delivering for  
4 value, peddling, possessing with intent to sell, and the gratuitous  
5 delivery or gift of any alcoholic beverage by any licensee.

6 x. "Unlawful alcoholic beverage activity." The manufacture,  
7 sale, distribution, bottling, rectifying, blending, treating, fortifying,  
8 mixing, processing, warehousing or transportation of any alcoholic  
9 beverage in violation of this chapter, or the importing, owning,  
10 possessing, keeping or storing in this State of alcoholic beverages  
11 with intent to manufacture, sell, distribute, bottle, rectify, blend,  
12 treat, fortify, mix, process, warehouse or transport alcoholic  
13 beverages in violation of this chapter, or the owning, possessing,  
14 keeping or storing in this State of any implement or paraphernalia  
15 for the manufacture, sale, distribution, bottling, rectifying, blending,  
16 treating, fortifying, mixing, processing, warehousing or  
17 transportation of alcoholic beverages with intent to use the same in  
18 the manufacture, sale, distribution, bottling, rectifying, blending,  
19 treating, fortifying, mixing, processing, warehousing or  
20 transportation of alcoholic beverages in violation of this chapter, or  
21 to aid or abet another in the manufacture, sale, distribution, bottling,  
22 rectifying, blending, treating, fortifying, mixing, processing,  
23 warehousing or transportation of alcoholic beverages in violation of  
24 this chapter, or the aiding or abetting of another in any of the  
25 foregoing activities.

26 y. "Unlawful property." All illicit beverages and all  
27 implements, vehicles, vessels, airplanes, and paraphernalia for the  
28 manufacture, sale, distribution, bottling, rectifying, blending,  
29 treating, fortifying, mixing, processing, warehousing or  
30 transportation of illicit beverages used in the manufacture, sale,  
31 distribution, bottling, rectifying, blending, treating, fortifying,  
32 mixing, processing, warehousing or transportation of illicit  
33 beverages or owned, possessed, kept or stored with intent to use the  
34 same in the manufacture, sale, distribution, bottling, rectifying,  
35 blending, treating, fortifying, mixing, processing, warehousing or  
36 transportation of illicit beverages, whether such use be by the  
37 person owning, possessing, keeping, or storing the same, or by  
38 another with the consent of such person; and all alcoholic  
39 beverages, fixtures and personal property located in or upon any  
40 premises, building, yard or inclosure connected with a building, in  
41 which an illicit beverage is found, possessed, stored or kept.

42 z. "Wholesaler." Any person who sells an alcoholic beverage  
43 for the purpose of resale either to a licensed wholesaler or to a  
44 licensed retailer, or both.

45 aa. "Limousine." A motor vehicle used in the business of  
46 carrying passengers for hire to provide prearranged passenger  
47 transportation at a premium fare on a dedicated, nonscheduled,

1 charter basis that is not conducted on a regular route, or is furnished  
2 without fare as an accommodation for a patron in connection with  
3 other business purposes, and with a seating capacity in no event of  
4 more than 14 passengers, not including the driver, provided, that  
5 such a motor vehicle shall not have a seating capacity in excess of  
6 four passengers, not including the driver, beyond the maximum  
7 passenger seating capacity of the vehicle, not including the driver,  
8 at the time of manufacture. This shall not include taxicabs, hotel or  
9 airport shuttles and buses, buses employed solely in transporting  
10 school children or teachers to and from school, vehicles owned and  
11 operated directly or indirectly by businesses engaged in the practice  
12 of mortuary science when those vehicles are used exclusively for  
13 providing transportation related to the provision of funeral services  
14 or vehicles owned and operated without charge or remuneration by  
15 a business entity for its own purposes.

16 bb. "Entertainment facility" is a privately-owned facility in  
17 which athletic, commercial, cultural, or artistic events are featured.

18 cc. "Caffeinated alcoholic beverage" is any prepackaged  
19 alcoholic beverage that has been supplemented by the manufacturer  
20 with caffeine or other stimulant that is metabolized by the body as  
21 caffeine.

22 Any definition herein contained shall apply to the same word in  
23 any form. Thus "sell" means to make a "sale" as above defined.  
24 (cf: P.L.2001, c.416, s.1)

25  
26 2. (New section) No person shall knowingly sell, offer for sale,  
27 deliver, receive, or purchase for resale in this State any caffeinated  
28 alcoholic beverage. A person who violates the provisions of this  
29 section shall be liable to a civil penalty of not less than \$250 for the  
30 first violation, not less than \$500 for the second violation, and  
31 \$1,000 for the third and each subsequent violation. The civil  
32 penalty shall be collected pursuant to the "Penalty Enforcement  
33 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary  
34 proceeding before the municipal court having jurisdiction.

35  
36 3. This act shall take effect on the first day of the third month  
37 following enactment.

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#### 40 STATEMENT

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42 This bill would prohibit the sale, delivery, receiving, and  
43 purchasing for resale of caffeinated alcoholic beverages. A  
44 caffeinated alcoholic beverage is defined in the bill as any  
45 prepackaged alcoholic beverage that has been supplemented by the  
46 manufacturer with added caffeine or other stimulant that is  
47 metabolized by the body as caffeine.

**S709 O'TOOLE, TURNER**

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1       The penalty for selling, offering for sale, delivering, receiving, or  
2 purchasing for resale a caffeinated alcoholic beverage would be not  
3 less than \$250 for the first violation, not less than \$500 for the  
4 second violation, and \$1,000 for the third and each subsequent  
5 violation.