

# ASSEMBLY, No. 1824

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## STATE OF NEW JERSEY

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INTRODUCED MAY 2, 1996

By Assemblyman O'TOOLE

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

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

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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 an  
14   alcohol content of more than one-half of one per centum (1/2 of 1%)  
15   by volume, including alcohol, beer, lager beer, ale, porter, naturally  
16   fermented wine, treated wine, blended wine, fortified wine, sparkling  
17   wine, distilled liquors, blended distilled liquors and any brewed,  
18   fermented or distilled liquors fit for use for beverage purposes or any  
19   mixture of the same, and fruit juices.

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

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

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

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

33      g. "Governing board or body." The board or body which governs  
34   a municipality, including a board of aldermen in municipalities so

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

Matter underlined thus is new matter.

1 governed; but in every municipality having a board of public works  
2 which exercises general licensing powers such board shall be  
3 considered as the governing board or body.

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

6 i. "Illicit beverage." Any alcoholic beverage manufactured,  
7 distributed, bought, sold, bottled, rectified, blended, treated, fortified,  
8 mixed, processed, warehoused, possessed or transported in violation  
9 of this chapter, or on which any federal tax or tax imposed by the laws  
10 of this State has not been paid; and any alcoholic beverage possessed,  
11 kept, stored, owned or imported with intent to manufacture, sell,  
12 distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse  
13 or transport in violation of the provisions of this chapter.

14 j. "Licensed building." Any building containing licensed premises.

15 k. "Licensed premises." Any premises for which a license under this  
16 chapter is in force and effect.

17 l. "Magistrate." The Superior Court or municipal court.

18 m. "Manufacturer." Any person who, directly or indirectly,  
19 personally or through any agency whatsoever, engages in the making  
20 or other processing whatsoever of alcoholic beverages.

21 n. "Municipality." Any city, town, township, village, or borough,  
22 including a municipality governed by a board of commissioners or  
23 improvement commission, but excluding a county.

24 o. "Municipal board." The municipal board of alcoholic beverage  
25 control as established by this chapter.

26 p. "Officer." Any sheriff, deputy sheriff, constable, police officer,  
27 member of the Division of State Police, or any other person having the  
28 power to execute a warrant for arrest, or any inspector or investigator  
29 of the Division of Alcoholic Beverage Control.

30 q. "Original container." Any container in which an alcoholic  
31 beverage has been delivered to a retail licensee.

32 r. "Person." Any natural person or association of natural persons,  
33 association, trust company, partnership, corporation, organization, or  
34 the manager, agent, servant, officer, or employee of any of them.

35 s. "Premises." The physical place at which a licensee is or may be  
36 licensed to conduct and carry on the manufacture, distribution or sale  
37 of alcoholic beverages, but not including vehicular transportation.

38 t. "Restaurant." An establishment regularly and principally used for  
39 the purpose of providing meals to the public, having an adequate  
40 kitchen and dining room equipped for the preparing, cooking and  
41 serving of food for its customers and in which no other business,  
42 except such as is incidental to such establishment, is conducted.

43 u. "Retailer." Any person who sells alcoholic beverages to  
44 consumers.

45 v. "Rules and regulations." The rules and regulations established  
46 from time to time by the director.

1       w. "Sale." Every delivery of an alcoholic beverage otherwise than  
2 by purely gratuitous title, including deliveries from without this State  
3 and deliveries by any person without this State intended for shipment  
4 by carrier or otherwise into this State and brought within this State, or  
5 the solicitation or acceptance of an order for an alcoholic beverage,  
6 and including exchange, barter, traffic in, keeping and exposing for  
7 sale, serving with meals, delivering for value, peddling, possessing  
8 with intent to sell, and the gratuitous delivery or gift of any alcoholic  
9 beverage by any licensee.

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

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

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

1       aa. "Limousine." A vehicle with a carrying capacity of not more  
2       than nine passengers, not including the driver, used in the business of  
3       carrying passengers for hire which is hired by charter or for a  
4       particular contract, or by the day or hour or other fixed period, or to  
5       transport passengers to a specified place, or which charges a fare or  
6       price agreed upon in advance between the operator and the passenger  
7       or which is furnished as an accommodation for a patron in connection  
8       with other business purposes. This shall not include taxicabs, hotel or  
9       airport shuttles and buses, or buses employed solely in transporting  
10      schoolchildren or teachers to and from school, or vehicles owned and  
11      operated without charge or remuneration by a business entity for its  
12      own purposes.

bb. "Regulated beverage" means any fluid, or solid capable of being converted into a fluid, which is offered for sale for human consumption and which has an alcohol content of 0.25 percent by volume, but less than 0.50 percent by volume. "Regulated beverage" shall not include any fluid which is offered for retail sale as a cough medicine, cough suppressant, expectorant, or other fluid or liquid offered for sale as a nonprescription drug or medicine.

20 Any definition herein contained shall apply to the same word in any  
21 form. Thus "sell" means to make a "sale" as above defined.

22 (cf: P.L. 1991, c.91, s.342)

24       2. (New section) a. The regulatory provisions of chapter 1 of  
25 Title 33 of the Revised Statutes governing the sale and consumption  
26 of alcoholic beverages also shall govern the sale and consumption of  
27 regulated beverages in this State.

28       b. The Director of the Division of Alcoholic Beverage Control, in  
29 accordance with the provisions of the "Administrative Procedure Act,"  
30 P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and  
31 regulations to effectuate the purposes of this act.

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33 3. This act shall take effect immediately.

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## STATEMENT

This bill would establish a new class of beverage subject to regulation by the Division of Alcoholic Beverage Control (ABC).

Under the provisions of the bill, beverages having an alcohol content of at least 0.25 percent by volume (1/4 of 1%), but less than 0.50 percent by volume (1/2 of 1%) would be considered "regulated beverages" and subject to the provisions of the "Alcoholic Beverage Control Act" (R.S.33:1-1 et seq.) governing the sale and consumption of alcoholic beverages.

45 The purpose of the bill is to regulate the sale and consumption of  
46 beverages having a noticeable alcoholic content. Recently, a beverage

1 having an alcoholic content of 0.49 percent was being sold in some  
2 New Jersey stores. Since the statutory standard for determining  
3 whether a beverage is an alcoholic or non-alcoholic beverage is an  
4 alcoholic content of 0.50 percent, this product could legally be  
5 marketed alongside sodas, flavored juices, and iced teas in the store  
6 and sold to children.

7 The bill establishes a new class of regulated beverage rather than  
8 changing the definitional criterion for determining what constitutes an  
9 "alcoholic beverage." Since both the federal statutes and the State  
10 currently use the 0.50 percent benchmark for determining whether a  
11 beverage is alcoholic or non-alcoholic, a change in that criterion by  
12 New Jersey would create a variety of complex problems, including, for  
13 example, the applicability of State and federal excise taxes and  
14 conflicting regulatory practices and policies. By establishing a new  
15 class of beverage, this bill provides a regulatory framework for these  
16 types of beverages while avoiding the problems which would be  
17 associated with change in the definition of what constitutes an  
18 alcoholic beverage in New Jersey.

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23 Provides for the regulation of beverages having an alcoholic content  
24 between 0.25 and 0.50 percent.