

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 665

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO TAXATION; CLASSIFYING FLAVORED MALT BEVERAGES AS SPIRITUOUS LIQUOR; REQUIRING REPORTING OF SALES OF FLAVORED MALT BEVERAGES; ALLOCATING THE REVENUE FROM TAXES PAID ON FLAVORED MALT BEVERAGES TO UNDERAGE DRINKING PREVENTION PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--LIQUOR EXCISE TAX REVENUE FROM FLAVORED MALT BEVERAGES.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the department of health for the office of substance abuse prevention in an amount equal to the net receipts attributable to the liquor excise tax revenue from flavored malt beverages to further

underscoring material = new  
[bracketed material] = delete

1 distribute to counties to fund underage drinking prevention  
2 programs pursuant to Subsection C of Section 7-17-12 NMSA  
3 1978."

4 Section 2. Section 7-17-2 NMSA 1978 (being Laws 1966,  
5 Chapter 49, Section 2, as amended) is amended to read:

6 "7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax  
7 Act:

8 A. "alcoholic beverages" means distilled or  
9 rectified spirits, potable alcohol, brandy, whiskey, rum, gin,  
10 aromatic bitters or any similar beverage, including blended or  
11 fermented beverages, dilutions or mixtures of one or more of  
12 the foregoing containing more than one-half of one percent  
13 alcohol by volume, but "alcoholic beverages" does not include  
14 medicinal bitters;

15 B. "beer" means an alcoholic beverage obtained by  
16 the fermentation of any infusion or decoction of barley, malt  
17 and hops or other cereals in water and includes porter, beer,  
18 ale and stout;

19 C. "cider" means an alcoholic beverage made from  
20 the normal alcoholic fermentation of the juice of sound, ripe  
21 apples that contains not less than one-half of one percent of  
22 alcohol by volume and not more than seven percent of alcohol by  
23 volume;

24 D. "department" means the taxation and revenue  
25 department, the secretary of taxation and revenue or any

.176881.1

underscored material = new  
[bracketed material] = delete

1 employee of the department exercising authority lawfully  
2 delegated to that employee by the secretary;

3 E. "flavored malt beverage" means an alcoholic  
4 beverage that is fermented in a manner similar to beer, from  
5 which some or all of the fermented alcohol has been removed and  
6 replaced with distilled ethyl alcohol, and:

7 (1) that contains at least one-half of one  
8 percent alcohol by volume;

9 (2) that is treated by processing, filtration  
10 or another method of manufacture that is not generally  
11 recognized as a traditional process in the production of beer  
12 as described in 27 C.F.R. Section 25.55;

13 (3) to which is added flavor or other  
14 ingredients containing alcohol, except for a hop extract;

15 (4) for which the producer is required to file  
16 a formula for approval with the United States alcohol and  
17 tobacco tax and trade bureau pursuant to 27 C.F.R. Section  
18 25.55; and

19 (5) that is not exempt pursuant to Subdivision  
20 (f) of 27 C.F.R. Section 25.55;

21 [~~E.~~] F. "fortified wine" means wine containing more  
22 than fourteen percent alcohol by volume when bottled or  
23 packaged by the manufacturer, but "fortified wine" does not  
24 include:

25 (1) wine that is sealed or capped by cork

.176881.1

underscored material = new  
[bracketed material] = delete

1 closure and aged two years or more;

2 (2) wine that contains more than fourteen  
3 percent alcohol by volume solely as a result of the natural  
4 fermentation process and that has not been produced with the  
5 addition of wine spirits, brandy or alcohol; or

6 (3) vermouth and sherry;

7 [~~F.~~] G. "microbrewer" means a person who produces  
8 fewer than five thousand barrels of beer in a year;

9 [~~G.~~] H. "person" includes, to the extent permitted  
10 by law, a federal, state or other governmental unit or  
11 subdivision or an agency, department, institution or  
12 instrumentality thereof;

13 [~~H.~~] I. "small winegrower" means a winegrower who  
14 produces fewer than nine hundred fifty thousand liters of wine  
15 in a year;

16 [~~F.~~] J. "spirituous liquor" means alcoholic  
17 beverages, [~~except~~] including flavored malt beverages but  
18 excluding fermented beverages such as wine, beer, cider and  
19 ale;

20 [~~J.~~] K. "wholesaler" means a person holding a  
21 license issued under Section 60-6A-1 NMSA 1978 or a person  
22 selling alcoholic beverages that were not purchased from a  
23 person holding a license issued under Section 60-6A-1 NMSA  
24 1978;

25 [~~K.~~] L. "wine" means an alcoholic beverage other

.176881.1

underscored material = new  
[bracketed material] = delete

1 than cider that is obtained by the fermentation of the natural  
2 sugar contained in fruit or other agricultural products, with  
3 or without the addition of sugar or other products, and that  
4 does not contain more than twenty-one percent alcohol by  
5 volume; and

6 ~~[E-]~~ M. "winegrower" means a person licensed  
7 pursuant to Section 60-6A-11 NMSA 1978."

8 Section 3. Section 7-17-12 NMSA 1978 (being Laws 1984,  
9 Chapter 85, Section 8, as amended) is amended to read:

10 "7-17-12. INTERPRETATION OF ACT--ADMINISTRATION AND  
11 ENFORCEMENT OF TAX.--

12 A. The department shall interpret the provisions of  
13 the Liquor Excise Tax Act.

14 B. The department shall administer and enforce the  
15 collection of the liquor excise tax, and the Tax Administration  
16 Act applies to the administration and enforcement of the tax.

17 C. The department shall require that liquor excise  
18 tax remitted on the sale of flavored malt beverages be  
19 identified separately from liquor excise tax remitted on the  
20 sale of all other alcoholic beverages. The tax collected on  
21 flavored malt beverages shall be distributed pursuant to the  
22 Tax Administration Act to the office of substance abuse  
23 prevention of the department of health for purposes of funding  
24 existing community-based underage drinking prevention and early  
25 intervention programs and for funding new underage drinking

.176881.1

underscored material = new  
[bracketed material] = delete

1 prevention and early intervention programs for underserved  
2 areas of the state. The criteria for existing and newly  
3 developed underage drinking prevention and early intervention  
4 programs shall be based on best practices and evidence-based  
5 programs established by the office of substance abuse  
6 prevention in New Mexico or the national center for substance  
7 abuse prevention."

8 Section 4. Section 60-3A-3 NMSA 1978 (being Laws 1981,  
9 Chapter 39, Section 3, as amended) is amended to read:

10 "60-3A-3. DEFINITIONS.--As used in the Liquor Control  
11 Act:

12 A. "alcoholic beverages" means distilled or  
13 rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
14 and aromatic bitters bearing the federal internal revenue strip  
15 stamps or any similar alcoholic beverage, including blended or  
16 fermented beverages, dilutions or mixtures of one or more of  
17 the foregoing containing more than one-half of one percent  
18 alcohol, but excluding medicinal bitters;

19 B. "beer" means an alcoholic beverage obtained by  
20 the fermentation of any infusion or decoction of barley, malt  
21 and hops or other cereals in water, and includes porter, beer,  
22 ale and stout;

23 C. "brewer" means a person who owns or operates a  
24 business for the manufacture of beer;

25 D. "club" means:

.176881.1

underscored material = new  
[bracketed material] = delete

1 (1) any nonprofit group, including an  
2 auxiliary or subsidiary group, organized and operated under the  
3 laws of this state, with a membership of not less than fifty  
4 members who pay membership dues at the rate of not less than  
5 five dollars (\$5.00) per year and who, under the constitution  
6 and bylaws of the club, have all voting rights and full  
7 membership privileges, and which group is the owner, lessee or  
8 occupant of premises used exclusively for club purposes and  
9 which group the director finds:

10 (a) is operated solely for recreation,  
11 social, patriotic, political, benevolent or athletic purposes;  
12 and

13 (b) has been granted an exemption by the  
14 United States from the payment of the federal income tax as a  
15 club under the provisions of Section 501(a) of the Internal  
16 Revenue Code of 1986, as amended, or, if the applicant has not  
17 operated as a club for a sufficient time to be eligible for the  
18 income tax exemption, it must execute and file with the  
19 director a sworn letter of intent declaring that it will, in  
20 good faith, apply for ~~[such]~~ an income tax exemption as soon as  
21 it is eligible; or

22 (2) an airline passenger membership club  
23 operated by an air common carrier that maintains or operates a  
24 clubroom at an international airport terminal. For the  
25 purposes of this paragraph, "air common carrier" means a person

.176881.1

underscoring material = new  
[bracketed material] = delete

1 engaged in regularly scheduled air transportation between fixed  
2 termini under a certificate of public convenience and necessity  
3 issued by the civil aeronautics board;

4 E. "commission" means the secretary of public  
5 safety when the term is used in reference to the enforcement  
6 and investigatory provisions of the Liquor Control Act and  
7 means the superintendent of regulation and licensing when the  
8 term is used in reference to the licensing provisions of the  
9 Liquor Control Act;

10 F. "department" means the special investigations  
11 division of the department of public safety when the term is  
12 used in reference to the enforcement and investigatory  
13 provisions of the Liquor Control Act and means the director of  
14 the alcohol and gaming division of the regulation and licensing  
15 department when the term is used in reference to the licensing  
16 provisions of the Liquor Control Act;

17 G. "director" means the director of the special  
18 investigations division of the department of public safety  
19 when the term is used in reference to the enforcement and  
20 investigatory provisions of the Liquor Control Act and means  
21 the director of the alcohol and gaming division of the  
22 regulation and licensing department when the term is used in  
23 reference to the licensing provisions of the Liquor Control  
24 Act;

25 H. "dispenser" means a person licensed under the

.176881.1



underscored material = new  
[bracketed material] = delete

1 provisions of the Liquor Control Act selling, offering for sale  
2 or having in [~~his~~] the person's possession with the intent to  
3 sell alcoholic beverages both by the drink for consumption on  
4 the licensed premises and in unbroken packages for consumption  
5 and not for resale off the licensed premises;

6 I. "distiller" means a person engaged in  
7 manufacturing spirituous liquors;

8 J. "flavored malt beverage" means an alcoholic  
9 beverage that is fermented in a manner similar to beer, from  
10 which some or all of the fermented alcohol has been removed and  
11 replaced with distilled ethyl alcohol, and:

12 (1) that contains at least one-half of one  
13 percent alcohol by volume;

14 (2) that is treated by processing, filtration  
15 or another method of manufacture that is not generally  
16 recognized as a traditional process in the production of beer  
17 as described in 27 C.F.R. Section 25.55;

18 (3) to which is added flavor or other  
19 ingredients containing alcohol, except for a hop extract;

20 (4) for which the producer is required to file  
21 a formula for approval with the United States alcohol and  
22 tobacco tax and trade bureau pursuant to 27 C.F.R. Section  
23 25.55; and

24 (5) that is not exempt pursuant to Subdivision  
25 (f) of 27 C.F.R. Section 25.55;

.176881.1

underscored material = new  
[bracketed material] = delete

1           ~~[J-]~~ K. "golf course" means a tract of land and  
2 facilities used for playing golf and other recreational  
3 activities that includes tees, fairways, greens, hazards,  
4 putting greens, driving ranges, recreational facilities,  
5 patios, pro shops, cart paths and public and private roads that  
6 are located within the tract of land;

7           ~~[K-]~~ L. "governing body" means the board of county  
8 commissioners of a county or the city council or city  
9 commissioners of a municipality;

10           ~~[L-]~~ M. "hotel" means an establishment or complex  
11 having a resident of New Mexico as a proprietor or manager and  
12 where, in consideration of payment, meals and lodging are  
13 regularly furnished to the general public. The establishment  
14 or complex must maintain for the use of its guests a minimum of  
15 twenty-five sleeping rooms;

16           ~~[M-]~~ N. "licensed premises" means the contiguous  
17 areas or areas connected by indoor passageways of a structure  
18 and the outside dining, recreation and lounge areas of the  
19 structure that are under the direct control of the licensee and  
20 from which the licensee is authorized to sell, serve or allow  
21 the consumption of alcoholic beverages under the provisions of  
22 its license; provided that in the case of a restaurant,  
23 including a restaurant that has operated continuously in two  
24 separate structures since July 1, 1987 and that is located in a  
25 local option district that has voted to disapprove the transfer

.176881.1

underscored material = new  
[bracketed material] = delete

1 of liquor licenses into that local option district, hotel, golf  
2 course or racetrack, "licensed premises" includes all public  
3 and private rooms, facilities and areas in which alcoholic  
4 beverages are sold or served in the customary operating  
5 procedures of the restaurant, hotel, golf course or racetrack;

6 [N-] O. "local option district" means a county that  
7 has voted to approve the sale, serving or public consumption of  
8 alcoholic beverages, or [~~any~~] an incorporated municipality that  
9 falls within a county that has voted to approve the sale,  
10 serving or public consumption of alcoholic beverages, or [~~any~~]  
11 an incorporated municipality of over five thousand population  
12 that has independently voted to approve the sale, serving or  
13 public consumption of alcoholic beverages under the terms of  
14 the Liquor Control Act or any former act;

15 [O-] P. "manufacturer" means a distiller,  
16 rectifier, brewer or winer;

17 [P-] Q. "minor" means a person under twenty-one  
18 years of age;

19 [Q-] R. "package" means an immediate container of  
20 alcoholic beverages that is filled or packed by a manufacturer  
21 or wine bottler for sale by the manufacturer or wine bottler to  
22 wholesalers;

23 [R-] S. "person" means an individual, corporation,  
24 firm, partnership, copartnership, association or other legal  
25 entity;

.176881.1

underscored material = new  
[bracketed material] = delete

1           [~~S.~~] T. "rectifier" means a person who blends,  
2 mixes or distills alcohol with other liquids or substances for  
3 the purpose of making an alcoholic beverage for the purpose of  
4 sale other than to the consumer by the drink, and includes all  
5 bottlers of spirituous liquors;

6           [~~F.~~] U. "restaurant" means an establishment having  
7 a New Mexico resident as a proprietor or manager, that is held  
8 out to the public as a place where meals are prepared and  
9 served primarily for on-premises consumption to the general  
10 public in consideration of payment and that has a dining room,  
11 a kitchen and the employees necessary for preparing, cooking  
12 and serving meals; provided that "restaurant" does not include  
13 establishments as defined in rules promulgated by the director  
14 serving only hamburgers, sandwiches, salads and other fast  
15 foods;

16           [~~U.~~] V. "retailer" means a person licensed under  
17 the provisions of the Liquor Control Act selling, offering for  
18 sale or having in [~~his~~] the person's possession with the intent  
19 to sell alcoholic beverages in unbroken packages for  
20 consumption and not for resale off the licensed premises;

21           [~~V.~~] W. "spirituous liquors" means alcoholic  
22 beverages as defined in Subsection A of this section, [~~except~~]  
23 including flavored malt beverages but excluding fermented  
24 beverages such as wine, beer and ale;

25           [~~W.~~] X. "wholesaler" means a person whose place of

underscored material = new  
[bracketed material] = delete

1 business is located in New Mexico and who sells, offers for  
2 sale or possesses for the purpose of sale any alcoholic  
3 beverages for resale by the purchaser;

4 ~~[X-]~~ Y. "wine" includes the words "fruit juices"  
5 and means alcoholic beverages obtained by the fermentation of  
6 the natural sugar contained in fruit or other agricultural  
7 products, with or without the addition of sugar or other  
8 products, that do not contain less than one-half of one percent  
9 nor more than twenty-one percent alcohol by volume;

10 ~~[Y-]~~ Z. "wine bottler" means a New Mexico  
11 wholesaler who is licensed to sell wine at wholesale for resale  
12 only and who buys wine in bulk and bottles it for wholesale  
13 resale;

14 ~~[Z-]~~ AA. "winegrower" means a person who owns or  
15 operates a business for the manufacture of wine; and

16 ~~[AA-]~~ BB. "winer" means a winegrower."

17 Section 5. A new section of Chapter 60, Article 3A NMSA  
18 1978 is enacted to read:

19 "[NEW MATERIAL] AUTHORITY OF DIRECTOR TO CLASSIFY FLAVORED  
20 MALT BEVERAGES AS SPIRITUOUS LIQUOR.--

21 A. The director shall, beginning on July 1, 2009,  
22 regulate flavored malt beverages as spirituous liquor.

23 B. No later than July 1, 2009, the director shall  
24 make available to the public on the internet a list of all  
25 flavored malt beverages authorized to be sold in the state as

.176881.1

underscoring material = new  
[bracketed material] = delete

1 spirituous liquor.

2 C. The director shall ensure that the list of  
3 flavored malt beverages authorized to be sold in the state is  
4 updated on the first day of each quarter of the calendar year.

5 D. On and after July 1, 2009, a manufacturer  
6 selling alcoholic beverages in the state shall file, under  
7 penalty of perjury, a report with the department listing each  
8 flavored malt beverage manufactured by the manufacturer that is  
9 distributed or sold in the state.

10 E. On or after July 1, 2009, a manufacturer shall  
11 not distribute or sell in the state a flavored malt beverage  
12 that the manufacturer has not listed in accordance with this  
13 section.

14 F. The department may require a manufacturer of a  
15 flavored malt beverage to provide the department with a copy of  
16 the following filed with the United States alcohol and tobacco  
17 tax and trade bureau, pursuant to 27 C.F.R. Section 25.55:

18 (1) a statement of process; or

19 (2) a formula.

20 G. A manufacturer of an alcoholic beverage that the  
21 director classifies or proposes to classify as a flavored malt  
22 beverage may submit evidence to the department to clarify that  
23 the alcoholic beverage is not a flavored malt beverage and may  
24 be classified as other than spirituous liquor. To prove that  
25 the alcoholic beverage is not a flavored malt beverage, the

.176881.1

1 manufacturer shall show:

2 (1) that the alcohol in the alcoholic beverage  
3 is created by fermentation, infusion or decoction of a malted  
4 grain;

5 (2) that the alcoholic beverage is produced by  
6 processing, filtration or another method of manufacture that is  
7 generally recognized as a traditional process in the production  
8 of beer as described in 27 C.F.R. Section 25.55; and

9 (3) that the alcoholic beverage does not  
10 contain added flavor or other ingredients containing alcohol,  
11 unless the alcohol is added as a hop extract, and:

12 (a) the producer is not required to file  
13 a formula for approval with the United States alcohol and  
14 tobacco tax and trade bureau pursuant to 27 C.F.R. Section  
15 25.55; or

16 (b) the alcoholic beverage is exempt  
17 pursuant to Subdivision (f) of 27 C.F.R. Section 25.55.

18 H. The department shall review the evidence  
19 submitted by the manufacturer to prove that the alcoholic  
20 beverage it manufactures is not a flavored malt beverage, and  
21 the director shall issue a finding stating the category in  
22 which the alcoholic beverage will be classified.

23 I. The department shall make available to the  
24 public on the internet a list of all alcoholic beverages  
25 determined by the director to be beer and that are authorized

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

pursuant to this section to be sold as beer in New Mexico."

- 16 -