

4221--B

2011-2012 Regular Sessions

I N S E N A T E

March 23, 2011

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged and said bill committed to the Committee on Alcoholism and Drug Abuse -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the alcoholic beverage control law, in relation to regulating the retail sale of flavored malt beverages

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 12-c of section 3 of the alcoholic beverage
2 control law, as renumbered by chapter 366 of the laws of 1992, is renum-
3 bered subdivision 12-d and a new subdivision 12-c is added to read as
4 follows:
5 12-C. "FLAVORED MALT BEVERAGE" MEANS AND INCLUDES ANY ALCOHOLIC BEVER-
6 AGE OF ANY NAME OR DESCRIPTION THAT IS MANUFACTURED FROM MALT, WHOLLY OR
7 IN PART, OR FROM ANY SUBSTITUTE THEREFOR; AND CONTAINING MORE THAN EIGHT
8 PER CENTUM ALCOHOL BY VOLUME WHICH IS A FERMENTED PRODUCT FOR WHICH THE
9 FORMULA THEREOF IS REQUIRED TO BE FILED WITH THE FEDERAL ALCOHOL AND
10 TOBACCO TAX AND TRADE BUREAU PURSUANT TO 27 CODE OF FEDERAL REGULATIONS
11 S 25.55 (A), AS SUCH REGULATIONS SHALL BE AMENDED FROM TIME TO TIME.
12 S 2. Section 65 of the alcoholic beverage control law is amended by
13 adding a new subdivision 3-a to read as follows:
14 3-A. NO PERSON, OR HIS OR HER AGENT OR EMPLOYEE, SHALL SELL, DELIVER
15 OR GIVE AWAY, OR CAUSE, PERMIT OR PROCURE TO BE SOLD, DELIVERED OR GIVEN
16 AWAY TO ANY PERSON, ACTUALLY OR APPARENTLY, UNDER THE AGE OF TWENTY-ONE
17 YEARS, ANY FLAVORED MALT BEVERAGE. A VIOLATION OF THIS SUBDIVISION SHALL
18 BE A CLASS E FELONY AS DEFINED IN THE PENAL LAW.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 S 3. Section 100 of the alcoholic beverage control law is amended by
2 adding a new subdivision 8 to read as follows:

3 8. NO LICENSEE, PERMITTEE OR PERSON SHALL SELL, DELIVER OR GIVE AWAY,
4 OR CAUSE, PERMIT OR PROCURE TO BE SOLD, DELIVERED OR GIVEN AWAY AT
5 RETAIL IN THIS STATE ANY FLAVORED MALT BEVERAGE IN ANY CONTAINER HAVING
6 A VOLUME IN EXCESS OF TWELVE OUNCES.

7 S 4. Section 105 of the alcoholic beverage control law is amended by
8 adding a new subdivision 13 to read as follows:

9 13. (A) EACH RETAIL LICENSEE FOR OFF-PREMISES CONSUMPTION THAT SELLS
10 FLAVORED MALT BEVERAGES SHALL SELL SUCH BEVERAGES IN AN AREA OF THE
11 LICENSED PREMISES THAT IS SEGREGATED FROM THE AREA WHERE OTHER BEVERAG-
12 ES, INCLUDING BEERS WHICH ARE NOT FLAVORED MALT BEVERAGES, ARE SOLD. NO
13 FLAVORED MALT BEVERAGES SHALL BE COMMINGLED WITH OTHER ALCOHOLIC OR
14 NONALCOHOLIC BEVERAGES.

15 FURTHERMORE, THE SEGREGATED AREA OF THE LICENSED PREMISES AT WHICH
16 FLAVORED MALT BEVERAGES ARE SOLD SHALL BE LOCATED SO AS TO BE WITHIN THE
17 VIEW OF THE EMPLOYEES AT SUCH PREMISES' SALES COUNTER OF THE LICENSEE OR
18 WITHIN THE COVERAGE AREA OF VIDEO SURVEILLANCE EQUIPMENT WHICH IS VIEWED
19 BY THE EMPLOYEES OF THE LICENSEE DURING ALL PERIODS OF TIME IN WHICH THE
20 LICENSED PREMISES IS OPEN FOR BUSINESS.

21 (B) ALL FLAVORED MALT BEVERAGES SOLD BY A RETAIL LICENSEE FOR
22 OFF-PREMISES CONSUMPTION SHALL BE SOLD IN AN UNREFRIGERATED STATE AND NO
23 SUCH LICENSEE SHALL SELL ANY SUCH BEVERAGE WHICH HAS BEEN COOLED BELOW
24 THE ROOM TEMPERATURE OF THE LICENSED PREMISES.

25 (C) AT THE FRONT OF THE SEGREGATED AREA OF THE LICENSED PREMISES WHERE
26 FLAVORED MALT BEVERAGES ARE SOLD, THE LICENSEE SHALL CONSPICUOUSLY POST
27 A SIGN THAT STATES THAT (I) THESE BEVERAGES ARE HIGH ALCOHOL FLAVORED
28 MALT BEVERAGES THAT CONTAIN MORE THAN EIGHT PER CENTUM ALCOHOL BY
29 VOLUME, (II) THAT THESE BEVERAGES SHOULD NOT BE CONFUSED WITH OTHER
30 ALCOHOLIC OR NONALCOHOLIC BEVERAGES WITH LOWER ALCOHOL CONTENT SUCH AS
31 BEER, AND (III) THE SALE OF SUCH BEVERAGES TO PERSONS UNDER THE AGE OF
32 TWENTY-ONE YEARS CARRIES WITH IT HEIGHTENED CRIMINAL PENALTIES. THE
33 STATE LIQUOR AUTHORITY SHALL BE AUTHORIZED TO PROMULGATE RULES AND REGU-
34 LATIONS PROVIDING FOR THE FORM AND CONTENT OF SUCH NOTICES AND WARNINGS.

35 S 5. Subdivision 2 of section 107-a of the alcoholic beverage control
36 law, as added by chapter 479 of the laws of 1940, is amended to read as
37 follows:

38 2. Such regulations shall be calculated to prohibit deception of the
39 consumer; to afford him OR HER adequate information as to quality and
40 identity; and to achieve national uniformity in this field in so far as
41 possible. IN ADDITION, FOR THE APPROVAL OF LABELS FOR CONTAINERS OF ANY
42 FLAVORED MALT BEVERAGE, THE LABEL OR CONTAINER THEREOF MUST:

43 (A) HAVE A DISCLOSURE THAT IS EITHER PART OF THE LABEL OR AFFIXED TO
44 THE CONTAINER THAT ADVISES PURCHASERS THAT THIS IS A HIGH ALCOHOL
45 FLAVORED MALT BEVERAGE (I) OVER CONSUMPTION OF THIS ALCOHOLIC BEVERAGE
46 MAY CAUSE A SIGNIFICANTLY HIGHER RISK OF ACCIDENTAL PHYSICAL INJURY TO
47 THE CONSUMER OR OTHERS, OR ALCOHOL POISONING; AND (II) THE OPERATION OF
48 MOTOR VEHICLES AND OTHER MACHINERY SHOULD BE AVOIDED AFTER CONSUMING
49 THIS ALCOHOLIC BEVERAGE;

50 (B) BE DESIGNED SO THAT IT CANNOT BE CONFUSED WITH OTHER BEVERAGES
51 THAT ARE NOT ALCOHOLIC AND ARE LEGALLY AVAILABLE FOR SALE TO PERSONS
52 UNDER THE AGE OF TWENTY-ONE YEARS, OR OTHER ALCOHOLIC BEVERAGES WITH A
53 LOWER ALCOHOL CONTENT SUCH AS BEER. SUCH DESIGN MAY BE ACCOMPLISHED BY
54 A LABEL DESIGN THAT PLACES A STRIPE OR OTHER INDICATOR TO SHOW THAT THIS
55 IS A HIGH ALCOHOL FLAVORED MALT BEVERAGE OR BY AFFIXING THE DISCLOSURE
56 REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION THAT ALSO CLEARLY INDI-

1 CATES THAT THIS IS A FLAVORED MALT BEVERAGE THAT CONTAINS MORE THAN
2 EIGHT PER CENTUM ALCOHOL BY VOLUME;

3 (C) BE DESIGNED SO AS NOT TO BE ATTRACTIVE TO OR ENCOURAGE THE
4 CONSUMPTION OF SUCH ALCOHOLIC BEVERAGE BY PERSONS UNDER THE AGE OF TWEN-
5 TY-ONE YEARS. SUCH DESIGN MAY BE ACCOMPLISHED BY A LABEL DESIGN THAT
6 CLEARLY INDICATES THAT THIS IS AN ALCOHOLIC BEVERAGE THAT CANNOT BE
7 LEGALLY CONSUMED BY PERSONS UNDER THE AGE OF TWENTY-ONE YEARS; AND

8 (D) PROVIDE NOTICE THAT THE SALE OF FLAVORED MALT BEVERAGES TO PERSONS
9 UNDER THE AGE OF TWENTY-ONE YEARS CARRIES WITH IT HEIGHTENED CRIMINAL
10 PENALTIES.

11 S 6. Clause (ii) of subparagraph 2 of paragraph (c) of subdivision 4
12 of section 107-a of the alcoholic beverage control law, as amended by
13 chapter 490 of the laws of 1993, is amended to read as follows:

14 (ii) the authority does not deny such application within thirty days
15 after receipt; PROVIDED, HOWEVER, THAT WITH RESPECT TO ANY FLAVORED MALT
16 BEVERAGE, THE AUTHORITY DOES NOT DENY SUCH APPLICATION WITHIN ONE
17 HUNDRED TWENTY DAYS AFTER RECEIPT SO THAT THE AUTHORITY HAS A SUFFICIENT
18 PERIOD OF TIME TO REVIEW SUCH LABEL AND ENSURE THAT THE REQUIREMENTS
19 ESTABLISHED IN SUCH SUBDIVISION ARE COMPLIED WITH.

20 S 7. Severability. If any clause, sentence, paragraph, section or part
21 of this act shall be adjudged by any court of competent jurisdiction to
22 be invalid and after exhaustion of all further judicial review, the
23 judgment shall not affect, impair or invalidate the remainder thereof,
24 but shall be confined in its operation to the clause, sentence, para-
25 graph, section or part of this act directly involved in the controversy
26 in which the judgment shall have been rendered.

27 S 8. This act shall take effect on the one hundred eightieth day after
28 it shall have become a law. Effective immediately, the state liquor
29 authority is authorized to add, amend and/or repeal any rules and regu-
30 lations necessary to implement the provisions of this act on its effec-
31 tive date.