

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO TAXATION -- SUGARY DRINKS TAX

Introduced By: Senators Lawson, McCaffrey, Miller, Cano, Quezada, Sosnowski,
DiMario, Euer, Murray, and Ciccone

Date Introduced: February 22, 2021

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings. The general assembly hereby finds and declares all of
2 the following:

3 (1) Over 79,000 Rhode Island adults report that they have been diagnosed with Type 2
4 diabetes. An additional 311,200 Rhode Island adults are at risk for developing diabetes.

5 (2) According to the Centers for Disease Control and Prevention, diabetes is the seventh
6 leading cause of death in Rhode Island.

7 (3) Hispanics and African Americans in Rhode Island have a higher prevalence of Type 2
8 diabetes than non-Hispanic Whites.

9 (4) The prevalence of obesity in the United States has increased over the past 30 years. In
10 Rhode Island, obesity rates have increased from 11.1 percent in 1990 to 30.0 percent in 2019. Low-
11 income populations and communities of color in Rhode Island report higher rates of obesity than
12 non-Hispanic white communities.

13 (5) There is overwhelming evidence of the link between obesity and diabetes with the
14 consumption of sugary drinks. Rates of other conditions such as hypertension, arthritis, and kidney
15 failure are higher in adults diagnosed with diabetes and obesity.

16 (6) According to nutritional experts, sugary drinks provide little to no nutritional value, but
17 contain massive quantities of added sugars. A 20-ounce bottle of soda contains approximately 16
18 teaspoons of sugar, yet the American Heart Association recommends that Americans consume no
19 more than 6 to 9 teaspoons of sugar per day.

1 (7) Sugary drinks are a unique contributor to excess caloric consumption. Research
2 indicates that approximately 50 percent of excess calories consumed by Americans comes from
3 sugary drinks, with the average American consuming nearly 50 gallons of sugary drinks per year.

4 (8) Studies on the taxation of sugary drinks have estimated a 55 to 1 return on investment
5 in healthcare savings. In Seattle, WA, a 1.75 cent per ounce tax has generated \$24 million in
6 revenues annually. Revenues from sugary drink taxes have been invested in low-income
7 communities and communities of color to increase access to healthy foods by funding fruit and
8 vegetable vouchers.

9 (9) One in seven Rhode Island citizens lack reliable access to nutritious, affordable food.
10 Communities of color and low-income communities are more likely to be affected by food
11 insecurity.

12 (10) Research indicates that improving the affordability of healthy foods can reduce food
13 insecurity and equitably improve the health of affected communities.

14 SECTION 2. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
15 adding thereto the following chapter:

16 CHAPTER 70

17 SUGARY DRINKS TAX

18 **44-70-1. Legislative intent.**

19 It is the intent of the general assembly, by adopting the sugary drinks tax, to:

20 (1) Increase access to and promote consumption of fresh fruits and vegetables among
21 Rhode Island's most vulnerable populations whose health is adversely impacted by the health
22 conditions associated with sugary drinks;

23 (2) Improve the overall health and wellness of Rhode Island families, children and
24 residents; and

25 (3) Reduce the burden of chronic disease in this state.

26 **44-70-2. Definitions.**

27 For the purposes of this chapter, the following words shall have the following meanings:

28 (1) "Beverage for medical use" means a beverage suitable for human consumption and
29 manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize
30 dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for
31 infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical
32 use" shall also mean a "medical food" as defined in section 5(b)(3) of the Orphan Drug Act (21
33 U.S.C. 360ee(b)(3). The Orphan Drug Act defines medical food as "a food which is formulated to
34 be consumed or administered externally under the supervision of a physician and which is intended

1 for the specific dietary management of a disease or condition for which distinctive nutritional
2 requirements, based on recognized scientific principles, are established by medical evaluation."
3 "Beverage for medical use" shall not include drinks commonly referred to as sports drinks or any
4 other common names that are derivations thereof.

5 (2) "Bottle" means any closed or sealed container regardless of size or shape, including,
6 without limitation, those made of glass, metal, paper, plastic, or any other material or combination
7 of materials.

8 (3) "Bottled sugary drink" means any sugary drink contained in a bottle that is ready for
9 consumption without further processing such as, without limitation, dilution or carbonation.

10 (4) "Caloric sweetener" means any caloric substance suitable for human consumption that
11 humans perceive as sweet and includes, without limitation: sugar, sucrose, dextrose, fructose,
12 glucose, and other monosaccharides and disaccharides; corn syrup or high fructose corn syrup;
13 honey; and any other substance designated by the department of human services. "Caloric
14 sweetener" excludes non-caloric sweeteners. For purposes of this definition, "caloric" means a
15 substance which adds calories to the diet of a person who consumes that substance.

16 (5) "Concentrate" means a syrup, powder, frozen or gel mixture, or other product
17 containing one or more sweeteners as an ingredient, intended to be used in making, mixing, or
18 compounding a sweetened beverage by combining the concentrate with one or more other
19 ingredients.

20 (6) "Consumer" means a person who purchases a sugary drink for consumption and not for
21 sale to another.

22 (7) "Department" means the Rhode Island department of human services (DHS).

23 (8) "Director" means the director of the Rhode Island department of revenue and his or her
24 authorized agents and employees.

25 (9) "Distributor" means any person, including manufacturers, bottlers, and wholesale
26 dealers, who receives, stores, manufactures, bottles, and/or distributes bottled sugary drinks,
27 syrups, or powders, for sale to retailers doing business in the state, whether or not that person also
28 sells such products to consumers.

29 (10) "Distribution" or "distribute" means to supply to a distributor or retailer, deliver to a
30 retailer, facilitate acquisition by a retailer, or transport into the state for the purpose of selling any
31 sugary drink product in the state, or any combination of these activities.

32 (11) "Division" means the Rhode Island division of taxation

33 (12) "Milk" means natural liquid milk regardless of animal or plant source or butterfat
34 content; natural milk concentrate, whether or not reconstituted; or dehydrated natural milk, whether

1 or not reconstituted.

2 (13) "Natural fruit juice" means the original liquid resulting from the pressing of fruits, or
3 the liquid resulting from the dilution with water of dehydrated natural fruit juice.

4 (14) "Natural vegetable juice" means the original liquid resulting from the pressing of
5 vegetables, or the liquid resulting from the dilution with water of dehydrated natural vegetable
6 juice.

7 (15) "Non-caloric sweetener" means any non-caloric substance suitable for human
8 consumption that humans perceive as sweet and includes, without limitation, aspartame,
9 acesulfame-K, neotame, saccharin, sucralose, and stevia. "Non-caloric sweetener" excludes caloric
10 sweeteners. For purposes of this definition, "non-caloric" means a substance that contains fewer
11 than five (5) calories per serving

12 (16) "Person" means any natural person, partnership, cooperative association, limited
13 liability company, corporation, personal representative, receiver, trustee, assignee, or any other
14 legal entity.

15 (17) "Place of business" means any place where sugary drinks, syrups, or powders are
16 manufactured or received for sale in the state.

17 (18) "Powder" means any solid mixture of ingredients used in making, mixing, or
18 compounding sugary drinks by mixing the powder with any one or more other ingredients,
19 including without limitation water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable
20 juice, carbonation, or other gas.

21 (19) "Retailer" means any person who sells or otherwise dispenses in the state a sugary
22 drink to a consumer whether or not that person is also a distributor as defined in this section.

23 (20) "Sale" means the transfer of title or possession for valuable consideration regardless
24 of the manner by which the transfer is completed.

25 (21) "State" means the state of Rhode Island

26 (22) "Sugary drink " means any nonalcoholic beverage, carbonated or noncarbonated,
27 which is intended for human consumption and contains any added caloric sweetener, whether in
28 bottles, prepared from concentrates, served as a fountain beverage, or in any form. "Sugary drink"
29 includes, without limitation, all drinks and beverages commonly referred to as soda, pop, cola, soft
30 drinks, sports drinks, energy drinks, fruit drinks, sweetened iced teas and coffees, and other
31 products with added caloric sweetener, flavored water with added caloric sweetener, and non-
32 alcoholic beverages that may or may not be mixed with alcohol or any other common names that
33 are derivations thereof. As used in this definition, "nonalcoholic beverage" means any beverage
34 that contains less than one-half of one percent (0.5%) alcohol per volume.

1 (23) "Syrup" means a liquid mixture of ingredients used in making, mixing, or
2 compounding sugary drinks using one or more other ingredients including, without limitation,
3 water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or
4 other gas.

5 (24) "Water" means plain (non-flavored) or flavored with natural fruit essence (with no
6 calories), or natural flavor. The source of the water may be: artesian, mineral, spring, or well. The
7 type may also include carbonated (sparkling, club, seltzer), still, distilled, or purified (distilled,
8 demineralized, deionized, reverse osmosis).

9 **44-70-3. Tax imposed.**

10 (a) There is hereby levied and imposed, in addition to all other taxes and fees now imposed
11 by law, a sugary drinks tax on every distributor for the privilege of selling bottled sugary drinks,
12 syrops or powders in the state of Rhode Island, calculated as follows:

13 (1) One and one-half cents (\$.015) per ounce for bottled sugary drinks;

14 (2) The tax on syrups or powders offered for sale, either as syrup or powder or as a sugary
15 drink derived from that syrup or powder, is equal to one and one-half cents (\$.015) per each ounce
16 of sugary drink produced from that syrup or powder. For purposes of calculating the tax, the volume
17 of sugary drink produced from syrups or powders shall be the larger of:

18 (i) The largest volume resulting from use of the syrups or powders according to any
19 manufacturer's instructions; or

20 (ii) The volume actually produced by the retailer, as reasonably determined by the tax
21 administrator.

22 (3) The tax shall be paid upon the first nonexempt distribution of a sugary drink product in
23 the state. However, if a distributor or a retailer receives taxable products on which the tax has not
24 been paid, the distributor or retailer shall be liable for the tax. The amount of tax with respect to
25 such business is equal to the volume of sugary drinks the distributor distributes in the state
26 multiplied the applicable tax rate in subsection (a)(1) or (a)(2) of this section.

27 (b) The tax shall be administered in such a way to be reflected in the retail cost of the
28 sugary drink.

29 (c) Sums received by the division of taxation under this section shall be distributed at least
30 quarterly, credited and paid by the state treasurer to the department of human services to fund the
31 Retail SNAP Incentive Program in order to increase access to and promote consumption of fresh
32 fruits and vegetables as outlined in § 44-70-14(a).

33 **44-70-4. Permit required.**

34 (a) Every distributor doing business in the state shall file with the division of taxation an

1 application for a permit to engage in such business, for each place of business owned and operated
2 by the distributor before the sooner of January 1, 2022, or a distributor's first acts which constitute
3 the doing of business in the state. An application for a permit shall be filed on forms to be furnished
4 by the division for that purpose. An application must be subscribed and sworn to by a person with
5 legal authority to bind the business. The application shall identify the owners of the applicant, the
6 applicant's mailing address, the place of business to which the permit shall apply, and the nature of
7 the business in which engaged, and any other information the division may require for the
8 enforcement of this chapter.

9 (b) Upon receipt of an application and any permit fee hereafter provided for, the division
10 may issue to the applicant, for the place of business designated, a non-assignable permit,
11 authorizing the sale of sugary drinks, syrups, and powders in the state. No distributor shall sell any
12 sugary drink, syrup or powder without first obtaining a permit issued under this chapter. Permits
13 issued pursuant to this section shall expire on January 31 of each year and may be renewed annually.

14 (c) A permit cannot be transferred from one person to another, and a permit shall at all
15 times be prominently displayed in a distributor's place of business. The division may refuse to issue
16 a permit to any person previously convicted of violations of this chapter under such procedures as
17 the division may establish by regulation.

18 **44-70-5. Report of sales and tax remittances.**

19 Any distributor or retailer liable for the tax imposed by this chapter shall, on or before the
20 twentieth day of every month, return to the director under oath of a person with legal authority to
21 bind the distributor or retailer, a statement containing the name of the person and place of business,
22 the quantity of sugary drinks, syrups, and powders subject to the excise tax imposed by this chapter
23 sold or offered for sale in the preceding month, and any other information required by the tax
24 administrator, along with the tax due.

25 **44-70-6. Records of distributors.**

26 Every distributor, and every retailer subject to this chapter, shall maintain for not less than
27 two (2) years accurate records, showing all transactions that gave rise, or may have given rise, to
28 tax liability under this chapter. Such records are subject to inspection by the tax administrator at all
29 reasonable times during normal business hours.

30 **44-70-7. Exemptions.**

31 The following items shall be exempt from the tax imposed by this chapter:

32 (1) Bottled sugary drinks, syrups, and powders sold to the United States Government and
33 American Indian Tribal Governments;

34 (2) Bottled sugary drinks, syrups, and powders sold by a distributor to another distributor

1 that holds a permit issued pursuant to this chapter, if the sales invoice clearly indicates that the sale
2 is exempt. If the sale is to a person who is both a distributor and a retailer, the sale shall also be tax
3 exempt and the tax shall be paid when the purchasing distributor/retailer resells the product to a
4 retailer or a consumer. This exemption does not apply to any other sale to a retailer;

5 (3) Bottled sugary drinks, syrups, and powders that the division of taxation has certified to
6 have been manufactured by a manufacturer with worldwide gross income of less than two million
7 dollars (\$2,000,000) in the prior calendar year. In order for a bottled sugary drink, syrup, or power
8 to be eligible for exemption under this section, the manufacturer must apply to the division for
9 certification according to rules established by the director;

10 (4) Bottled sugary drinks, syrups, and powders sold directly by a manufacturer to a
11 consumer without the involvement of a third party to transport or distribute the bottled sugary
12 drinks, syrups, or powders;

13 (5) Beverages sweetened solely with non-caloric sweeteners;

14 (6) Beverages consisting of one hundred percent (100%) natural fruit or vegetable juice
15 with no added caloric sweetener;

16 (7) Beverages in which milk, or soy, rice, or similar milk substitute, is the primary
17 ingredient or the first listed ingredient on the label of the beverage;

18 (8) Coffee or tea without added caloric sweetener;

19 (9) Infant formula;

20 (10) Beverages for medical use; and

21 (11) Water without any caloric sweeteners.

22 **44-70-8. Penalties.**

23 (a) Any person subject to the provisions of this chapter who fails to pay the entire amount
24 of tax imposed by this chapter by the date that payment is due, fails to submit a report or maintain
25 records required by this chapter, or violates any other provision of this chapter, or rules and
26 regulations promulgated by the division for the enforcement of this chapter, shall be guilty of a
27 misdemeanor and shall also be liable for the amount of the tax that may be due and a penalty equal
28 to fifty percent (50%) of the tax due. The division, or its duly authorized representative, may
29 determine the amount due in the event of any nonpayment or underpayment that may come to its
30 attention and demand payment of all such taxes and penalties. Interest shall accrue on non- or
31 under-payment of tax at a rate of twelve percent (12%) per year from the date the tax was due until
32 paid. For good reason shown, the division may waive all or any part of the penalties imposed but
33 shall have no power to waive interest.

34 (b) All administrative provisions of chapter 18 of this title including those which provide

1 for the apportionment of economic activity between that within the tax jurisdiction of the state and
2 such activity outside that jurisdiction, which fix damages, penalties and interest for nonpayment of
3 taxes and for noncompliance with the provisions of said chapter, and all other requirements and
4 duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of
5 this chapter, and the division shall exercise all the power and authority and perform all the duties
6 with respect to taxpayers under this chapter as are provided in chapter 18 of this title, except where
7 there is conflict, and then the provisions of this chapter shall control.

8 **44-70-9. Unpaid taxes as debt.**

9 All taxes and penalties imposed under the provisions of this chapter remaining due and
10 unpaid shall constitute a debt to the state, which may be collected from the person owing the same
11 by suit or otherwise.

12 **44-70-10. Records of the division of taxation.**

13 At the end of each month, the state auditor shall carefully check the books and records of
14 the director and his or her accounts with any bank or banks, and shall verify the amounts collected
15 pursuant to this chapter and paid to the department of human services. Any duty herein required of
16 the state auditor may be performed by any duly trained clerk in the auditor's office, designated by
17 the state auditor for that purpose.

18 **44-70-11. Exercise of powers and duties.**

19 Whenever in this chapter any reference is made to any power or duty of the director, the
20 reference is construed to mean that the power or duty shall be exercised by the director, under the
21 supervision and direction of the director of administration.

22 **44-70-12. Rules and regulations.**

23 The division of taxation is hereby empowered to make such rules and regulations, and
24 provide such procedural measures, in cooperation with the state auditor, as may be reasonably
25 necessary to accomplish and implement the purposes of this chapter.

26 **44-70-13. Severability.**

27 If any provision of this chapter, any rule or regulation made under this chapter, or the
28 application of this chapter to any person or circumstance is held invalid by any court of competent
29 jurisdiction, the remainder of the chapter, rule, or regulation, and the application of the provision
30 to other persons or circumstances shall not be affected. The invalidity of any section or sections or
31 parts of any section of this chapter shall not affect the validity of the remainder of the chapter.

32 **44-70-14. Establishment of the retail SNAP incentives program fund.**

33 (a) There shall be established a separate fund to be known as the Retail SNAP Incentives
34 Program (RSIP) fund. The department of human services shall administer the fund. The fund shall

1 consist of revenues from the state generated by the tax imposed by § 44-70-3. The fund shall be
2 expended first for the implementation and administration of a Retail SNAP Incentives Program to
3 promote healthy food access and nutrition among Rhode Island SNAP recipients.

4 (b) SNAP recipients will receive a minimum fifty cents (\$0.50) credit on their Electronic
5 Benefit Transfer (EBT) card for each one dollar (\$1.00) spent on eligible fruits and vegetables at
6 participating RSIP retailers, up to a monthly limit as determined by the department. These credits
7 shall be funded via the RSIP fund established in this section.

8 **44-70-15. Public reporting and evaluation.**

9 (a) The department shall provide, annually and no later than three (3) months after the end
10 of the fiscal year, information to the general assembly and general public about tax revenues
11 received and the programs and initiatives funded by these revenues, and any unspent funds. The
12 department shall develop an Internet website and post the annual report and additional materials to
13 inform distributors, retailers, and the general public about the tax, its intent, its scope, and operation.

14 (b) The department shall contract with academic researchers to complete an evaluation of:

15 (1) The effects of the tax on sugary drink prices, sales and consumption one and three (3)
16 years after tax implementation;

17 (2) The economic impacts of the tax including employment and business revenues in
18 affected business sectors one and three (3) years after tax implementation; and

19 (3) The impacts of programs and initiatives funded by the tax. The evaluations should
20 specifically address the equity impacts of the tax. Evaluators should develop partnerships with
21 community members to ensure community participation in the evaluation.

22 SECTION 3. This act shall take effect on January 1, 2022.

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LC002083
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION -- SUGARY DRINKS TAX

1 This act would impose a tax of one and one-half cents (\$.015) per ounce on the sale of
2 bottled sugary drinks and syrups or powders from which a sugary drink may be derived for the
3 purpose of depositing the amount of the tax collected into the Retail SNAP Incentive Fund to
4 promote healthy food access and nutrition among SNAP recipients.

5 This act would take effect on January 1, 2022.

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