

H.235

Introduced by Representatives Till of Jericho, Clarkson of Woodstock,
Bartholomew of Hartland, Connor of Fairfield, Dakin of
Chester, Donovan of Burlington, Evans of Essex, Huntley of
Cavendish, Martin of Wolcott, McCormack of Burlington,
McCullough of Williston, Mrowicki of Putney, Nuovo of
Middlebury, O'Sullivan of Burlington, Poirier of Barre City,
Ryerson of Randolph, Stevens of Waterbury, Stuart of
Brattleboro, Sullivan of Burlington, Toleno of Brattleboro,
Townsend of South Burlington, and Walz of Barre City

Referred to Committee on

Date:

Subject: Taxation; excise; sugar-sweetened beverages

Statement of purpose of bill as introduced: This bill proposes to impose an
excise tax on sugar-sweetened beverages, and to direct revenue from the tax to
the State Health Care Resources Fund and to the Vermont Healthy Weight
Initiative Fund.

An act relating to the imposition of an excise tax on sugar-sweetened
beverages

It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. LEGISLATIVE FINDINGS

2 (a) Vermont is facing a serious public health crisis as the incidence of
3 preventable illnesses related to obesity, such as Type II diabetes, heart disease,
4 and many forms of cancer rise with overall rates of obesity in Vermont's
5 population.

6 (b) More than 60 percent of adults and 29 percent of children in Vermont
7 are either overweight or obese. The overall rate of obesity in Vermont has
8 climbed from 10.7 percent in 1990 to 24.7 percent in 2013.

9 (c) Annually, the State of Vermont spends \$202 million to treat
10 obesity-related illnesses in adults. A substantial amount of these costs are
11 incurred by publicly funded health care programs such as Medicare
12 (\$41 million) and Medicaid (\$57 million).

13 (d) There is overwhelming scientific evidence that consumption of
14 sugar-sweetened beverages is directly linked to the incidence of obesity,
15 obesity-related diseases, and dental caries.

16 (e) Sugar-sweetened beverages are the single largest source of added sugar
17 in American's diets, representing 36 percent of the added sugars an average
18 American consumes.

19 (f) Consumption of sugar-sweetened beverages represents the largest
20 category of caloric intake in American children, surpassing milk in the late
21 1990s.

1 (g) Sugar-sweetened beverages provide no nutritional value and contain
2 unhealthy amounts of added sugar. The American Heart Association
3 recommends a daily intake of six teaspoons of sugar for women and nine
4 teaspoons for men. An average 20-ounce soda contains 16 teaspoons of added
5 sugar.

6 (h) Research suggests that our bodies process liquid sugar differently than
7 sugar in foods, especially those containing fiber.

8 (i) Studies also show that high-calorie beverages do not have the same
9 appetite-suppressing effect on those who consume them as do the same number
10 of calories consumed in solid food.

11 (j) Taxes and subsidies on food can influence consumption and numerous
12 peer-reviewed public health studies recommend that sugar-sweetened beverage
13 taxes should be implemented as part of a comprehensive strategy to prevent
14 obesity.

15 Sec. 2. 32 V.S.A. chapter 227 is added to read:

16 CHAPTER 227. SUGAR-SWEETENED BEVERAGE TAX

17 § 9401. DEFINITIONS

18 As used in this chapter:

19 (1) “Beverage for medical use” means a beverage suitable for human
20 consumption and manufactured for use as an oral nutritional therapy for
21 persons who cannot absorb or metabolize dietary nutrients from food or

1 beverages, or for use as an oral rehydration electrolyte solution for infants and
2 children formulated to prevent or treat dehydration due to illness. “Beverage
3 for medical use” shall also mean a “medical food” as defined in section 5(b)(3)
4 of the Orphan Drug Act at 21 U.S.C. § 360ee(b)(3). “Beverage for medical
5 use” shall not include drinks commonly referred to as “sports drinks” or any
6 other common names that are derivations thereof.

7 (2) “Caloric sweetener” means any caloric substance suitable for human
8 consumption that humans perceive as sweet and includes, without limitation,
9 sucrose, fructose, glucose, fruit juice concentrate, or other sugars. “Caloric
10 sweetener” excludes non-caloric sweeteners. As used in this definition,
11 “caloric” means a substance which adds calories to the diet of a person who
12 consumes that substance.

13 (3) “Commissioner” means the Commissioner of Taxes and his or her
14 authorized agents and employees.

15 (4) “Consumer” means a person who purchases or otherwise obtains a
16 sugar-sweetened beverage for consumption and not for sale to another.

17 (5) “Department” means the Vermont Department of Taxes.

18 (6) “Distribution” or “Distribute” means the transfer of title or
19 possession from one person to another for consideration or within a business
20 entity or between or among business entities subject to the same ownership or
21 control, such as by a wholesale or warehousing unit to a retail outlet or

1 between two or more employees or contractors. “Distribution” or “Distribute”
2 shall not mean the retail sale to a consumer.

3 (7) “Distributor” means any person, including a manufacturer and a
4 wholesale dealer, who receives, stores, manufactures, bottles, or distributes
5 syrup, powder, or sugar-sweetened beverages for sale to retailers, whether or
6 not that person also sells such products to consumers. “Distributor” also
7 means any person importing or causing to be imported syrup, powder, or
8 sugar-sweetened beverages into the State from outside the State for sale to a
9 retailer or consumer.

10 (8) “Place of business” means any place where syrup, powder, or
11 sugar-sweetened beverages are manufactured or received for sale in the State.

12 (9) “Powder” means any solid mixture of ingredients used in making,
13 mixing, or compounding sugar-sweetened beverages by mixing the powder
14 with any one or more other ingredients, including water, ice, syrup, simple
15 syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or
16 other gas.

17 (10) “Retailer” means any person who sells syrup, powder, or
18 sugar-sweetened beverages to consumers in the State.

19 (11) “Sale” means the transfer of title or possession for valuable
20 consideration regardless of the manner by which the transfer is completed.

1 (12) “Sugar-sweetened beverage” means any nonalcoholic beverage,
2 carbonated or noncarbonated, that is intended for human consumption as a
3 beverage and contains any added sweetener. As used in this definition,
4 “nonalcoholic beverage” means any beverage that contains less than one-half
5 of one percent alcohol per volume.

6 (13) “Sweetener” means any caloric substance suitable for human
7 consumption that humans perceive as sweet and includes sucrose, fructose,
8 glucose, other sugars, or fruit juice concentrates but does not include any
9 substance that adds fewer than five calories per reference amount customarily
10 consumed or per labeled serving.

11 (14) “Syrup” means a liquid mixture of ingredients used in making,
12 mixing, or compounding sugar-sweetened beverages using one or more other
13 ingredients, such as water, ice, powder, simple syrup, fruits, vegetables, fruit
14 juice, vegetable juice, or carbonation or other gas.

15 § 9402. TAX IMPOSED

16 (a) There is imposed an excise tax on every distributor of \$0.02 per ounce
17 upon sugar-sweetened beverages sold in the State.

18 (b) There is imposed an excise tax on every distributor of \$0.02 per ounce
19 of syrup and powder sold in the State. For purposes of calculating the tax
20 under this subsection, the taxable volume of syrup or powder shall be equal to

1 the largest volume of sugar-sweetened beverage resulting from use of the syrup
2 or powder according to the manufacturer's instructions.

3 § 9403. RETURNS AND REMITTANCES

4 (a) Any distributor liable for the tax imposed by this chapter shall, on or
5 before the 15th day of every month, return to the Commissioner, under oath of
6 a person with legal authority to bind the distributor, a statement containing its
7 name and place of business, the quantity of syrup, powder, and
8 sugar-sweetened beverages subject to the excise tax imposed by this chapter
9 sold in the preceding month, and any other information required by the
10 Commissioner, along with the tax due.

11 (b) There is established a special fund pursuant to chapter 7, subchapter 5
12 of this title comprising one-third of the revenue from the tax imposed by this
13 chapter together with any additions or interest accruing to the Fund. The Fund
14 shall be called the "Vermont Healthy Weight Initiative Fund." The
15 Commissioner of Finance and Management may draw warrants for
16 disbursements from this Fund in anticipation of receipts. The monies in the
17 Fund shall be available for the General Assembly to appropriate in accordance
18 with subsection (d) of this section. Any remaining balance at the end of the
19 fiscal year shall be carried forward in the Fund. The Fund shall be
20 administered by a board comprising representatives from the Agency of
21 Human Services, the Agency of Education, the Agency of Agriculture, Food

1 and Markets, and one representative selected by the Governor from the health
2 care community, from the public health community, and from an organization
3 whose purpose it is to advocate for residents with low-income.

4 (c) Two-thirds of the revenue from the tax imposed by this chapter shall be
5 deposited in the State Health Care Resources Fund established under 33 V.S.A.
6 § 1901d.

7 (d) The funds in the Vermont Healthy Weight Initiative Fund may only be
8 used to:

9 (1) subsidize the purchase of fruits and vegetables by WIC, Reach Up,
10 Reach Ahead, and 3SquaresVT recipients;

11 (2) establish a revolving loan fund to facilitate the purchase of
12 energy-efficient refrigeration equipment for the sale of fruits and vegetables by
13 small food retailers;

14 (3) provide electronic benefits transfer terminals to all Vermont farmers'
15 markets as well as technical assistance, promotional support, and
16 reimbursement to farmers' markets for transaction costs; and

17 (4) support programs that promote nutrition and physical activity and
18 are evaluated, including to efforts to increase physical activity in Vermont
19 communities such as through enhancements to the built environment.

20 § 9404. RECORDS

21 Every distributor shall maintain, for not less than three years, accurate

1 records showing all transactions subject to tax liability under this chapter.
2 Distributors must identify the amount of tax collected as a separate invoice
3 entry on sales to retailers. These records are subject to inspection by the
4 Commissioner at all reasonable times during normal business hours.

5 § 9405. EXEMPTIONS

6 The following shall be exempt from the tax imposed by section 9402 of this
7 chapter:

8 (1) Syrup, powder, or sugar-sweetened beverages sold to the
9 U.S. government, its subdivisions, or under any other circumstances in which
10 the State is without power to impose the tax.

11 (2) Syrup, powder, or sugar-sweetened beverages sold by a distributor
12 for resale or consumption outside the State.

13 (3) Syrup, powder, or sugar-sweetened beverages sold by a distributor to
14 another distributor and not intended for resale to a consumer if the purchasing
15 distributor holds a license issued under section 9406 of this chapter and if the
16 sales invoice clearly indicates that the sale is exempt.

17 (4) Beverages sweetened solely with non-caloric sweeteners.

18 (5) Beverages in which milk, or soy, rice, or similar milk substitute, is
19 the primary ingredient or the first listed ingredient on the label of the beverage.

20 (6) Coffee or tea without added caloric sweetener.

21 (7) Infant formula.

1 (8) Beverages for medical use.

2 (9) Water without any caloric sweeteners.

3 (10) Beverages consisting of 100 percent natural fruit or vegetable juice
4 with no added sweetener. As used in this subdivision, "natural fruit juice" and
5 "natural vegetable juice" mean the original liquid resulting from the pressing
6 of fruits or vegetables or the liquid resulting from the dilution of dehydrated
7 natural fruit juice or natural vegetable juice.

8 § 9406. LICENSE REQUIRED

9 Each distributor shall secure a license from the Commissioner before
10 engaging in the business of selling sugar-sweetened beverages in the State.

11 § 9407. APPLICATION FOR AND ISSUANCE OF LICENSE

12 (a) A separate application and license is required for each wholesale outlet
13 when a distributor owns or controls more than one such outlet.

14 (b) Licenses shall be issued by the Commissioner on application, without
15 charge, on forms prescribed by the Commissioner, stating the name and
16 address of the applicant, the address of the place of business, the type of
17 business, and any other information the Commissioner may require for the
18 proper administration of this chapter.

19 § 9408. TERM OF LICENSES

20 Each license issued under the provisions of this chapter shall be valid as
21 long as the licensee continues to do business at the place named, unless the

1 license is revoked or suspended by the Commissioner as provided in section
2 9409 of this chapter. If the business is sold or transferred or if the licensee
3 ceases to do business at the place named, the license shall immediately be
4 returned to the Commissioner for cancellation.

5 § 9409. REVOCATION AND SUSPENSION OF LICENSES

6 The Commissioner may revoke or suspend the license of any licensee for
7 failure to comply with any provision of this chapter or for failure to comply
8 with the provisions of 11 V.S.A. chapter 15.

9 § 9410. PENALTIES

10 (a) Any person subject to the provisions of this chapter who fails to pay the
11 tax imposed by this chapter by the date that payment is due or fails to submit a
12 return as required by this chapter is subject to the provisions of section 3202 of
13 this title (interest and penalties).

14 (b) Any person subject to the provisions of this chapter who sells or offers
15 for sale any syrup, powder, or sugar-sweetened beverages in the State without
16 holding a license as required by this chapter is liable for a penalty of up to
17 \$100.00 for each day such sales are made or offered.

18 § 9411. APPEALS

19 Any person aggrieved by an action taken by the Commissioner under this
20 chapter may appeal in writing to the Commissioner for a review. The
21 Commissioner shall then grant a hearing under 3 V.S.A. chapter 25 and notify

1 the aggrieved person in writing of his or her determination. The
2 Commissioner's determination may be appealed within 30 days to the Superior
3 Court of the county of this State in which the taxpayer resides or has a place of
4 business or to the Superior Court of Washington County.

5 § 9412. BONDING

6 When the Commissioner, in his or her discretion, considers it necessary to
7 protect the revenues raised under this chapter, he or she may require any
8 licensee to file with him or her a bond under the terms of section 3114 of this
9 title.

10 § 9413. RULES AND REGULATIONS

11 The Commissioner is authorized to adopt rules and procedures to
12 accomplish the purposes of this chapter.

13 Sec. 3. MONITORING

14 The Department of Health shall develop criteria and components for an
15 independent evaluation to assess the impact that the sugar-sweetened beverage
16 tax has on consumption of products affected by the implementation of the tax.
17 Specifically, the evaluation shall seek to determine the impact of these
18 exclusions on consumer purchasing and health outcomes.

19 Sec. 4. EFFECTIVE DATE

20 This act shall take effect on July 1, 2015.