H.343

Introduced by Representatives Till of Jericho, Brumsted of Shelburne, Campbell of St. Johnsbury, Carroll of Bennington, Christensen of Weathersfield, Cordes of Lincoln, Durfee of Shaftsbury, Houghton of Essex, LaLonde of South Burlington, Lanpher of Vergennes, McCormack of Burlington, McCullough of Williston, Mrowicki of Putney, Squirrell of Underhill, and Yantachka of Charlotte

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 Adverse Childhood Experiences 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:

Sec. 1. LEGISLATIVE FINDINGS

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

(b) More than 60 percent of adults and 25 percent of high school students in Vermont are either overweight or obese. The rate of obesity for adults in Vermont has climbed from 10.7 percent in 1990 to 27.6 percent in 2017.

(c) Annually, the State of Vermont spends over $200 million to treat obesity-related illnesses in adults. A substantial amount of these costs are incurred by publicly funded health care programs such as Medicare ($41 million) and Medicaid ($57 million).

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

(e) Sugar-sweetened beverages are the single largest source of added sugar in Americans’ diets, representing 39 percent of the added sugars an average American consumes.

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

(g) Sugar-sweetened beverages provide no nutritional value and contain unhealthy amounts of added sugar. The American Heart Association recommends a daily intake of six teaspoons of sugar for women and nine
teaspoons for men. A 12-ounce can of soda may contain eight to 13 teaspoons of sugar.

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

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

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

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

CHAPTER 227. SUGAR-SWEETENED BEVERAGE TAX

§ 9401. DEFINITIONS

As used in this chapter:

(1) “Beverage for medical use” means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness. “Beverage for medical use” shall also mean a “medical food” as defined in subdivision
5(b)(3) of the Orphan Drug Act at 21 U.S.C. § 360ee. “Beverage for medical use” shall not include drinks commonly referred to as “sports drinks” or any other common names that are derivations thereof.

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

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

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

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

(6) “Distribution” or “Distribute” means the transfer of title or possession from one person to another for consideration or within a business entity or between or among business entities subject to the same ownership or control, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors. “Distribution” or “Distribute” shall not mean the retail sale to a consumer.
(7) “Distributor” means any person, including a manufacturer and a wholesale dealer, that receives, stores, manufactures, bottles, or distributes syrup, powder, or sugar-sweetened beverages for sale to retailers, whether or not that person also sells such products to consumers. “Distributor” also means any person importing or causing to be imported syrup, powder, or sugar-sweetened beverages into the State from outside the State for sale to a retailer or consumer.

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

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

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

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

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

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

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

§ 9402. TAX IMPOSED

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

(b) There is imposed an excise tax on every distributor of $0.02 per ounce
of syrup and powder sold in the State. For purposes of calculating the tax
under this subsection, the taxable volume of syrup or powder shall be equal to
the largest volume of sugar-sweetened beverage resulting from use of the syrup
or powder according to the manufacturer’s instructions.
§ 9403. RETURNS AND REMITTANCES

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

(b) There is established a special fund pursuant to chapter 7, subchapter 5 of this title comprising the revenue from the tax imposed by this chapter together with any additions or interest accruing to the Fund. The Fund shall be called the “Adverse Childhood Experiences Initiative Fund.” The Commissioner of Finance and Management may draw warrants for disbursements from this Fund in anticipation of receipts. The monies in the Fund shall be available for the General Assembly to appropriate in accordance with subsection (c) of this section. Any remaining balance at the end of the fiscal year shall be carried forward in the Fund. The Fund shall be administered by the Secretary of Human Services.

(c) The funds in the Adverse Childhood Experiences Initiative Fund shall only be used to:
(1) subsidize initiatives focused on building resilience for persons experiencing adverse childhood experiences;

(2) support programs directed at preventing adverse childhood experiences; and

(3) support programs directed at improving childhood nutrition.

§ 9404. RECORDS

Every distributor shall maintain, for not less than three years, accurate records showing all transactions subject to tax liability under this chapter. Distributors must identify the amount of tax collected as a separate invoice entry on sales to retailers. These records are subject to inspection by the Commissioner at all reasonable times during normal business hours.

§ 9405. EXEMPTIONS

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

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

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

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

(4) Beverages sweetened solely with noncaloric sweeteners.

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

(6) Coffee or tea without added caloric sweetener.

(7) Infant formula.

(8) Beverages for medical use.

(9) Water without any caloric sweeteners.

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

§ 9406. LICENSE REQUIRED

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

§ 9407. APPLICATION FOR AND ISSUANCE OF LICENSE

(a) A separate application and license is required for each wholesale outlet
when a distributor owns or controls more than one such outlet.
(b) Licenses shall be issued by the Commissioner on application, without
charge, on forms prescribed by the Commissioner, stating the name and
address of the applicant, the address of the place of business, the type of
business, and any other information the Commissioner may require for the
proper administration of this chapter.

§ 9408. TERM OF LICENSES

Each license issued under the provisions of this chapter shall be valid as
long as the licensee continues to do business at the place named, unless the
license is revoked or suspended by the Commissioner as provided in section
9409 of this chapter. If the business is sold or transferred or if the licensee
ceases to do business at the place named, the license shall immediately be
returned to the Commissioner for cancellation.

§ 9409. REVOCATION AND SUSPENSION OF LICENSES

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

§ 9410. PENALTIES

(a) Any person subject to the provisions of this chapter that fails to pay the
tax imposed by this chapter by the date that payment is due or fails to submit a
return as required by this chapter is subject to the provisions of section 3202 of
this title (interest and penalties).
(b) Any person subject to the provisions of this chapter that sells or offers
for sale any syrup, powder, or sugar-sweetened beverages in the State without
holding a license as required by this chapter is liable for a penalty of up to
$100.00 for each day such sales are made or offered.

§ 9411. APPEALS

Any person aggrieved by an action taken by the Commissioner under this chapter may appeal in writing to the Commissioner for a review. The Commissioner shall then grant a hearing under 3 V.S.A. chapter 25 and notify the aggrieved person in writing of his or her determination. The Commissioner’s determination may be appealed within 30 days to the Superior Court of the county of this State in which the taxpayer resides or has a place of business or to the Superior Court of Washington County.

§ 9412. BONDING

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

§ 9413. RULES

The Commissioner is authorized to adopt rules and procedures to accomplish the purposes of this chapter.
Sec. 3. MONITORING

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

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2019.