

1 H.151

2 Introduced by Representatives Till of Jericho, Representatives Clarkson of
3 Woodstock, French of Randolph, Kitzmiller of Montpelier,
4 Miller of Shaftsbury, Mitchell of Barnard, Mrowicki of Putney,
5 O'Brien of Richmond, Poirier of Barre City, Shand of
6 Weathersfield, Spengler of Colchester, Waite-Simpson of Essex
7 and Webb of Shelburne

8 Referred to Committee on

9 Date:

10 Subject: Taxation; excise; sugar-sweetened beverages

11 Statement of purpose: This bill proposes to impose an excise tax on
12 sugar-sweetened beverages.

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

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

16 Sec. 1. FINDINGS

17 The general assembly finds:

18 (1) According to the beverage industry, in 2008, Americans consumed
19 14.2 billion gallons of carbonated soft drinks, or an average of over 46 gallons
20 per person per year. The Rudd Center for Food Policy & Obesity at Yale

1 University estimates annual adult consumption in Vermont to be 72.2 gallons
2 of soft drinks and fruit drinks, including 48.8 gallons of sugar-sweetened
3 beverages.

4 (2) “Refreshment beverages” account for 5.5 percent–9 percent of daily
5 calorie intake. This figure is based on average consumption across the entire
6 U.S. population, even though there are many people who drink no or few
7 sugar-sweetened beverages, which means that per capita consumption of
8 calories from sugar-sweetened beverages is even higher among those who
9 drink them regularly.

10 (3) Consumption of sugar-sweetened beverages has doubled since 1977
11 in the United States and has also increased in many areas internationally. As
12 sugar-sweetened beverage consumption has increased, it has replaced
13 consumption of other beverages, particularly milk and fruit juice, in the diet of
14 children and adolescents.

15 (4) According to a recent USDA analysis of CDC data, “caloric
16 sweetened sodas” and fruit drinks are major sources of added sugars in the
17 United States, contributing an average of 10.58 teaspoons of added sugars
18 daily; for children, the figure is 11.96 teaspoons.

19 (5) Soft drink consumption is the single greatest contributor to the intake
20 of total added sweeteners, making up 37.1 percent and 40.7 percent,
21 respectively, among female and male adolescents.

1 (6) According to a study of schoolchildren conducted during
2 1995–1997, the risk of obesity increased one to six times with each additional
3 daily serving of sugar-sweetened beverage.

4 (7) Replacing sugar-sweetened beverages with noncaloric drinks
5 significantly reduced body mass index (BMI) among adolescents with a higher
6 starting BMI; for each additional sugar-sweetened beverage serving, both BMI
7 and frequency of obesity increased after adjustment for anthropometric,
8 demographic, dietary, and lifestyle variables.

9 (8) By way of explaining their contribution to obesity, sugar-sweetened
10 beverages, unlike sugar-sweetened foods, do not seem to promote a feeling of
11 satiety, which would prevent individuals from compensating for the calories
12 ingested from sugar-sweetened beverages during later meals. This dynamic
13 leads to a higher caloric intake overall, by an average of 172 calories in
14 children and 175 calories in adults each day.

15 (9) The Centers for Disease Control and Prevention has summed up the
16 situation as follows: In the area of consuming sugar-sweetened drinks,
17 evidence is growing to suggest an association with weight gain in children and
18 adolescents. Consuming sugar-sweetened drinks may be associated with
19 obesity because these drinks are high in calories. Children may not
20 compensate at meals for the calories they have consumed in sugar-sweetened

1 drinks, although this may vary by age. Also, liquid forms of energy may be
2 less satiating than solid forms and lead to higher caloric intake.

3 (10) According to an analysis of 88 studies, there are “clear
4 associations” between soft drink intake and energy intake and body weight,
5 with larger effect sizes linked to stronger research methods and smaller effect
6 sizes appearing in studies funded by the beverage industry.

7 (11) Substantial consumption of sugar-sweetened beverages is believed
8 to have other long-term health effects as well. There is a strong body of
9 evidence that sugar-sweetened beverages are a cause of type 2 diabetes.

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

11 CHAPTER 227. SUGAR-SWEETENED BEVERAGE TAX

12 § 9401. DEFINITIONS

13 As used in this chapter:

14 (1) “Catamount fund” means the Catamount fund established pursuant
15 to 33 V.S.A. § 1986.

16 (2) “Commissioner” means the commissioner of the department of taxes
17 and his or her authorized agents and employees.

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

20 (4) “Department” means the Vermont department of taxes.

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

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

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

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

16 (9) “Sugar-sweetened beverage” means any nonalcoholic beverage,
17 carbonated or noncarbonated, which is intended for human consumption and
18 contains any added sweetener. As used in this definition, “nonalcoholic
19 beverage” means any beverage that contains less than one-half of one percent
20 alcohol per volume. However, the term “sugar-sweetened beverage” does
21 not include:

1 (A) Beverages consisting of 100 percent natural fruit or vegetable
2 juice with no added sweetener. For purposes of this subdivision (9), “natural
3 fruit juice” and “natural vegetable juice” mean the original liquid resulting
4 from the pressing of fruits or vegetables, or the liquid resulting from the
5 dilution of dehydrated natural fruit juice or natural vegetable juice;

6 (B) Milk, with or without any added sweetener, which means natural
7 liquid milk regardless of animal source or butterfat content; natural milk
8 concentrate, whether or not reconstituted, regardless of animal source or
9 butterfat content; dehydrated natural milk, whether or not reconstituted and
10 regardless of animal source or butterfat content; or soy, rice, or similar milk
11 substitutes;

12 (C) Infant formula.

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

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

1 § 9402. TAX IMPOSED

2 (a) There is imposed an excise tax on every distributor of \$0.01 per ounce
3 upon sugar-sweetened beverages sold in the state.

4 (b) There is imposed on every distributor an excise tax of \$0.01 per ounce
5 of syrup and powder sold in the state. For purposes of calculating the tax
6 under this subsection, the taxable volume of syrup or powder shall be equal to
7 the largest volume of sugar-sweetened beverage resulting from use of the syrup
8 or power according to the manufacturer's instructions.

9 § 9403. RETURNS AND REMITTANCES

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

17 (b) There is established a special fund pursuant to subchapter 5 of chapter 7
18 of Title 32 comprising one-third of the revenue from the tax imposed by this
19 chapter together with any additions or interest accruing to the fund. The fund
20 shall be called the "Vermont healthy weight initiative fund." The
21 commissioner of finance and management may draw warrants for

1 disbursements from this fund in anticipation of receipts. The monies in the
2 fund shall be available for the general assembly to appropriate in accordance
3 with subsection (e) of this section. Any remaining balance at the end of the
4 fiscal year shall be carried forward in the fund.

5 (c) One-third of the revenue from the tax imposed by this chapter shall be
6 deposited in the Catamount fund.

7 (d) One-third of the revenue from the tax imposed by this chapter shall be
8 used to fund the credit in 32 V.S.A. § 9413 and the administration of this
9 chapter.

10 (e) The funds in the Vermont healthy weight initiative fund may only be
11 used to:

12 (1) subsidize the purchase of fruits and vegetables by WIC and
13 3SquaresVT recipients;

14 (2) establish a revolving loan fund to facilitate the purchase of energy
15 efficient refrigeration equipment for the sale of fruits and vegetables by small
16 food retailers;

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

20 (4) subsidize school meals for low income Vermonters; and

1 (5) create a permanent and self-sustaining fund to support programs
2 combating obesity to be administered by a board comprising representatives
3 from the agency of human services, the department of education, and the
4 agency of agriculture, food and markets.

5 § 9404. RECORDS

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

11 § 9405. EXEMPTIONS

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

14 (1) Syrup, powder, or sugar-sweetened beverages sold to the United
15 States government, its subdivisions, or under any other circumstances where
16 the state is without power to impose the tax;

17 (2) Syrup, powder, or sugar-sweetened beverages sold by a distributor
18 for resale or consumption outside the state; and

19 (3) Syrup, powder, or sugar-sweetened beverages sold by a distributor to
20 another distributor and not intended for resale to a consumer if the purchasing

1 distributor holds a license issued pursuant to section 9406 of this chapter and if
2 the sales invoice clearly indicates that the sale is exempt.

3 § 9406. LICENSE REQUIRED

4 Each distributor shall secure a license from the commissioner of taxes
5 before engaging in the business of selling sugar-sweetened beverages in the
6 state.

7 § 9407. APPLICATION FOR AND ISSUANCE OF LICENSE

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

10 (b) Licenses shall be issued by the commissioner on application without
11 charge, on forms prescribed by the commissioner, stating the name and address
12 of the applicant, the address of the place of business, the type of business, and
13 any other information as the commissioner may require for the proper
14 administration of this chapter.

15 § 9408. TERM OF LICENSES

16 Each license issued under the provisions of this chapter shall be valid as
17 long as the licensee continues to do business at the place named, unless the
18 license is revoked or suspended by the commissioner as provided in section
19 9409 of this chapter. If the business is sold or transferred, or if the licensee
20 ceases to do business at the place named, the license shall immediately be
21 returned to the commissioner for cancellation.

1 § 9409. REVOCATION AND SUSPENSION OF LICENSES

2 The commissioner may revoke or suspend the license of any licensee for
3 failure to comply with any provision of this chapter, or for failure to comply
4 with the provisions of chapter 15 of Title 11.

5 § 9410. PENALTIES

6 (a) Any person subject to the provisions of this chapter who fails to pay the
7 tax imposed by this chapter by the date that payment is due or fails to submit a
8 return as required by this chapter is subject to the provisions of section 3202 of
9 this title.

10 (b) Any person subject to the provisions of this chapter who sells or offers
11 for sale any syrup, powder, or sugar-sweetened beverages in the state without
12 holding a license as required by this chapter is liable for a penalty of up to
13 \$100.00 for each day such sales are made or offered.

14 § 9411. APPEALS

15 Any person aggrieved by an action taken by the commissioner under this
16 chapter may appeal in writing to the commissioner for a review. The
17 commissioner shall then grant a hearing subject to the provisions of chapter 25
18 of Title 3 and notify the aggrieved person in writing of his or her
19 determination. The commissioner's determination may be appealed within
20 30 days to the superior court of the county of this state in which the taxpayer
21 resides or has a place of business, or the superior court of Washington County.

1 § 9412. BONDING

2 When the commissioner, in his or her discretion, deems it necessary to
3 protect the revenues to be obtained under this chapter, he or she may require
4 any licensee to file with him or her a bond under the terms of section 3114 of
5 this title.

6 § 9413. RETAILER CREDIT

7 There shall be available a refundable credit against the tax imposed by
8 section 5822 or 5832 of this title for any retailer who certifies that he or she
9 has maintained the retail price differential created by this tax between
10 sugar-sweetened beverages and other beverages. The credit shall be in an
11 amount of one-quarter cent per ounce of sugar-sweetened beverage sold in the
12 taxable year. The department of taxes shall develop forms and procedures for
13 claiming this credit.

14 Sec. 3. MONITORING

15 The department of health shall develop criteria and components for an
16 independent evaluation to assess the impact that the sugar-sweetened beverage
17 tax has on consumption of products affected by the implementation of the tax.
18 Specifically, the evaluation shall seek to determine the impact of these
19 exclusions on consumer purchasing and health outcomes. The amount of
20 \$100,000.00 is appropriated to the department of health for this purpose.

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on July 1, 2011.