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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO TAXATION - SUGARY DRINKS

Introduced By: Senators Nesselbush, Crowley, Paolino, Jabour, and Miller

Date Introduced: February 01, 2018

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative Findings.

2 (1) Obesity is common as approximately one-third of adults (36.5 %) and approximately
3 12.7 million (17 %) of children and adolescents ages two (2) to nineteen (19) years old living in
4 the United States are obese; and

5 (2) Obesity has more than doubled in children and quadrupled in adolescents in the past
6 thirty (30) years, and obese children are at least twice as likely as nonobese children to become
7 obese adults; and

8 (3) Twenty-five (25) states currently have an adult obesity rate above thirty percent
9 (30%), forty-three (43) states have rates of at least twenty-five (25%) percent, and every state has
10 a rate above twenty percent (20%); and

11 (4) In accordance with the most recent data, twenty-six percent (26%) of the adults and
12 over thirteen percent (13%) of children between the ages of ten (10) to seventeen (17) living in
13 the state of Rhode Island are obese; and

14 (5) Obesity increases the risk of serious health conditions such as type 2 diabetes,
15 coronary heart disease, stroke, hypertension, some types of cancer, sleep apnea and other
16 respiratory problems; and

17 (6) Obesity-related health conditions have serious economic costs and overweight and
18 obesity may account for one hundred forty-seven billion dollars (\$147,000,000,000) in annual
19 health care costs nationally, or nine percent (9%) of all medical spending; and

1 (7) In the United States, roughly one-half (1/2) of these costs may be paid by Medicare
2 and Medicaid, meaning taxpayers absorb the costs for health care associated with obesity
3 treatment; and

4 (8) Medicare and Medicaid spending would be eight and one-half percent (8.5%) and
5 eleven and eight-tenths percent (11.8%) lower, respectively, in the absence of obesity-related
6 spending

7 (9) There is sufficient scientific evidence that regular consumption of sugary drinks
8 causes excess weight gain and these beverages are unique contributors to obesity and type 2
9 diabetes; and there is sufficient scientific evidence that reducing sugary drink consumption will
10 have a significant impact on the prevalence of obesity and obesity-related diseases such as type 2
11 diabetes and other metabolic diseases; and

12 (10) Sugary drinks are the single largest source of added sugars in the American diet and
13 an average twenty ounce (20 oz.) sugary drink, such as soda, contains fifteen (15) to eighteen (18)
14 teaspoons of sugar and upwards of two hundred forty (240) calories; and

15 (11) The American Heart Association recommends limiting the amount of added sugars
16 adults consume to no more than half of their daily discretionary calorie allowance and for most
17 American women, that is no more than one hundred (100) calories per day, or about six (6)
18 teaspoons of sugar, and for men, it is one hundred fifty (150) calories per day, or about nine (9)
19 teaspoons; and

20 (12) The American Heart Association recommends that a person eating a two thousand
21 (2,000) calorie diet consume no more than four hundred fifty (450) calories from sugary drinks
22 per week and if adults are sedentary, their consumption should be lower; and

23 (13) Taxes and subsidies on food can influence consumption and it is recommended that
24 taxes should be implemented as part of a comprehensive strategy to prevent obesity; and

25 (14) In the case of sugary drinks, research suggests that a 10 percent (10%) increase in
26 their prices may lead to an eight to ten percent (8 – 10%) reduction in sugary drink purchases.

27 SECTION 2. TITLE 44 of the General Laws entitled "TAXATION" is hereby
28 amended by adding thereto the following chapter:

29 CHAPTER 70

30 SUGARY DRINKS TAX

31 **44-70-1. Short title.**

32 This chapter shall be known and may be cited as the "Sugary Drinks Tax".

33 **44-70-2. Legislative Intent.**

34 It is the intent of the general assembly, by adopting a sugary drinks tax and creating the

1 children's health promotion fund, to diminish the human and economic costs of obesity in the
2 state of Rhode Island. The intent is to discourage excessive consumption of sugary drinks and to
3 create a dedicated revenue source for programs designed to benefit public health and wellness.

4 **44-70-3. Definitions.**

5 As used in this chapter, the following words and terms shall have the following meanings
6 unless the context clearly indicate another or different meaning or intent:

7 (1) "Beverage for medical use" means a beverage suitable for human consumption and
8 manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize
9 dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for
10 infants and children formulated to prevent or treat dehydration due to illness. "Beverage for
11 medical use" shall also mean a "medical food" as defined in section 5(b)(3) of the Orphan Drug
12 Act (21 U.S.C. 360ee(b)(3)); this chapter defines medical food as "a food which is formulated to
13 be consumed or administered externally under the supervision of a physician and which is
14 intended for the specific dietary management of a disease or condition for which distinctive
15 nutritional requirements, based on recognized scientific principles, are established by medical
16 evaluation." "Beverage for medical use" shall not include drinks commonly referred to as "sports
17 drinks" or any other common names that are derivations thereof.

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

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

23 (4) "Caloric sweetener" means any caloric substance suitable for human consumption that
24 humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, fruit juice
25 concentrate or other sugars. "Caloric sweetener" excludes noncaloric sweeteners. For purposes of
26 this definition, "caloric" means a substance which adds calories to the diet of a person who
27 consumes that substance.

28 (5) "Consumer" means a person who purchases a sugary drink for consumption and not
29 for sale to another.

30 (6) "Department of health" means the Rhode Island department of health.

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

- 1 (8) "Division of taxation" means the Rhode Island division of taxation.
- 2 (9) "Fund" means the children's health promotion fund established pursuant to §44-70-8.
- 3 (10) "Milk" means natural liquid milk regardless of animal or plant source or butterfat
4 content; including natural milk concentrate, whether or not reconstituted; or dehydrated natural
5 milk, whether or not reconstituted.
- 6 (11) "Natural fruit juice" means the original liquid resulting from the pressing of fruits, or
7 the liquid resulting from the dilution with water of dehydrated natural fruit juice.
- 8 (12) "Natural vegetable juice" means the original liquid resulting from the pressing of
9 vegetables, or the liquid resulting from the dilution with water of dehydrated natural vegetable
10 juice.
- 11 (13) "Noncaloric sweetener" means any noncaloric substance suitable for human
12 consumption that humans perceive as sweet and includes, without limitation, aspartame,
13 acesulfame-K, neotame, saccharin, sucralose, and stevia. "Noncaloric sweetener" excludes caloric
14 sweeteners. For purposes of this definition, "noncaloric" means a substance that contains fewer
15 than five (5) calories per serving.
- 16 (14) "Person" means any natural person, partnership, cooperative association, limited
17 liability company, corporation, personal representative, receiver, trustee, assignee, or any other
18 legal entity.
- 19 (15) "Place of business" means any place where sugary drinks, syrups, or powders are
20 manufactured or received for sale in the state.
- 21 (16) "Powder" means any solid mixture of ingredients used in making, mixing, or
22 compounding sugary drinks by mixing the powder with any one or more other ingredients,
23 including without limitation water, ice, syrup, simple syrup, fruits, vegetables, fruit juice,
24 vegetable juice, carbonation, or other gas.
- 25 (17) "Retailer" means any person who sells or otherwise dispenses in the state a sugary
26 drink to a consumer whether or not that person is also a distributor as defined in this section.
- 27 (18) "Sale" means the transfer of title or possession for valuable consideration regardless
28 of the manner by which the transfer is completed.
- 29 (19) "Sugary drink" means any nonalcoholic beverage, carbonated or noncarbonated,
30 which is intended for human consumption and contains any added caloric sweetener. As used in
31 this definition, "nonalcoholic beverage" means any beverage that contains less than one-half of
32 one percent (.5%) alcohol per volume.
- 33 (20) "Syrup" means a liquid mixture of ingredients used in making, mixing, or
34 compounding sugary drinks using one or more other ingredients including, without limitation,

1 water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or
2 other gas.

3 (21) "Tax administrator" means the tax administrator of the Rhode Island division of
4 taxation or authorized agents and employees.

5 (22) "Water" means plain (nonflavored) 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.
7 The type may also include carbonated (sparkling, club, seltzer), still, distilled, or purified
8 (distilled, demineralized, deionized, reverse osmosis).

9 **44-70-4. License Required.**

10 (a) Every distributor doing business in this state shall file with the division of taxation an
11 application for a license to engage in a business under this chapter, for each place of business
12 owned and operated by the distributor before the sooner of January 1, 2019 or a distributor's first
13 acts which constitute the doing of business in the state. An application for a license shall be filed
14 on forms to be furnished by the division of taxation for that purpose. An application must be
15 subscribed and sworn to by a person with legal authority to bind the business. The application
16 shall identify the owners of the applicant, the applicant's mailing address, the place of business to
17 which the license shall apply, and the nature of the business in which engaged, and any other
18 information the division of taxation may require for the enforcement of this chapter.

19 (b) Upon receipt of an application and any license fee hereafter provided for, the division
20 of taxation may issue to the applicant, for the place of business designated, a nonassignable
21 license, authorizing the sale of sugary drinks, syrups, and powders in the state. No distributor
22 shall sell any sugary drink, syrup or powder without first obtaining a license to do so under this
23 chapter. Licenses issued pursuant to this section shall expire on January 31 of each year and may
24 be renewed annually.

25 (c) A license cannot be transferred, and shall at all times be prominently displayed in a
26 distributor's place of business. The division of taxation may refuse to issue a license to any
27 person previously convicted of violations of this chapter under such procedures as the division of
28 taxation may establish by regulation.

29 **44-70-5. Tax Imposed.**

30 (a) There is hereby imposed an excise tax on every distributor for the privilege of selling
31 the products governed by this chapter in the state.

32 (1) The tax shall be calculated using the following tiered system.

33 (i) Tier 1: Beverages with less than five grams (5g) of sugar per twelve fluid ounces (12
34 fl. oz.) will not be taxed.

1 (ii) Tier 2: Beverages with more than five grams (5g) but less than twenty grams (20g) of
2 sugar per twelve fluid ounces (12 fl. oz.) will be taxed at a rate of one cent (\$0.01) per ounce.

3 (iii) Tier 3: Beverages with twenty grams (20g) of sugar or more per twelve fluid ounces
4 (12 fl. oz.) will be taxed at a rate of two cents (\$0.02) per ounce.

5 (2) Syrups and powders sold or offered for sale to a retailer for sale in the state to a
6 consumer, either as syrup or powder or as a sugary drink derived from that syrup or powder, are
7 taxable.

8 (i) Syrups and powders shall be taxed using the following tiered system.

9 (A) Tier 1: If the beverages made from the syrup or powder have less than five grams
10 (5g) of sugar per twelve fluid ounces (12 fl. oz.), the syrup or powder will not be taxed.

11 (B) Tier 2: If the beverages made from the syrup or powder have more than five grams
12 (5g) but less than twenty grams (20g) of sugar per twelve fluid ounces (12 fl. oz.), the syrup or
13 powder will be taxed at a rate equal to one cent (\$0.01) per ounce for each gallon of sugary drink
14 produced from that syrup or powder.

15 (C) Tier 3: If the beverages made from the syrup or powder have twenty grams (20g) of
16 sugar or more per twelve fluid ounces (12 fl. oz.), the syrup or powder will be taxed at a rate
17 equal to two cents (\$0.02) per ounce for each gallon of sugary drink produced from that syrup or
18 powder.

19 (ii) For purposes of calculating the tax, the volume of sugary drinks produced from
20 syrups or powders shall be the larger of:

21 (A) The largest volume resulting from use of the syrups or powders according to any
22 manufacturer's instructions; or

23 (B) The volume actually produced by the retailer, as reasonably determined by the tax
24 administrator;

25 (3) The tax amounts set forth in this section shall be adjusted annually by the tax
26 administrator in proportion with the Consumer Price Index: All Urban Consumers for All Items
27 for the Northeast Region Statistical Area as reported by the United States Bureau of Labor
28 Statistics or any successor to that index.

29 (4) Manufacturers, bottlers, wholesalers, or distributors shall add the amount of the tax
30 imposed by this section to the retail price of sugary drinks.

31 (b) A retailer who sells bottled sugary drinks, syrups, or powders in the state to a
32 consumer, on which the tax imposed by this section has not been paid by a distributor, is liable
33 for the tax imposed in subsection (a) of this section at the point of sale to a consumer.

34 (c) The taxes imposed by this section are in addition to any other taxes that may apply to

1 persons or products subject to this chapter.

2 **44-70-6. Report of sales and tax remittances.**

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

9 **44-70-7. Records of Distributors.**

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

14 **44-70-8. Establishment of the Children's Health Promotion Fund.**

15 There shall be established and set up a separate fund to be known as the children's health
16 promotion fund. The department of health shall administer the fund. The fund shall consist of
17 revenues from the state generated by the tax imposed by chapter 70 of title 44. The fund shall be
18 expended first for the implementation, administration, enforcement and evaluation of chapter 70
19 of title 44. Unexpended balances shall be allocated in a proportion to be determined by the
20 director of the department of health in consultation with other agency heads. Qualifying programs
21 and initiatives funded under chapter 70 of title 44 shall include, but not be limited to:

22 (1) Investments in biking, walking and outdoor recreation;

23 (2) Investments in safe routes to schools;

24 (3) Efforts to promote more frequent, effective physical education in schools;

25 (4) Initiatives that promote access to healthy foods, especially in underserved
26 communities;

27 (5) Programs that significantly increase Supplemental Nutrition Assistance Program
28 (SNAP) benefits when used to purchase fruits and vegetables;

29 (6) Initiatives that promote good nutrition, physical activity, and limited screen time in
30 early childcare settings and out-of-school programs;

31 (7) Efforts to promote and achieve health equity;

32 (8) Programs that help children achieve a healthy weight;

33 (9) Development and promotion of materials that educate children, families and citizens
34 about the health effects of consuming sugary drinks and promote the consumption of tap water;

1 (10) Other evidence-based methods of improving children's health and wellness in areas
2 including, but not limited to, nutrition, physical activity, access to health care and oral care.

3 **44-70-9. Exemptions.**

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

5 (1) Bottled sugary drinks, syrups, and powders sold to the United States government and
6 American Indian Tribal governments;

7 (2) Bottled sugary drinks, syrups, and powders sold by a distributor to another distributor
8 that holds a license issued pursuant to chapter, if the sales invoice clearly indicates that the sale is
9 exempt. If the sale is to a person who is both a distributor and a retailer, the sale shall also be tax
10 exempt and the tax shall be paid when the purchasing distributor/retailer resells the product to a
11 retailer or a consumer. This exemption does not apply to any other sale to a retailer;

12 (3) Beverages sweetened solely with noncaloric sweeteners;

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

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

17 (6) Coffee or tea without added caloric sweetener;

18 (7) Infant formula;

19 (8) Beverages for medical use;

20 (9) Water without any caloric sweeteners.

21 **44-70-10. Penalties.**

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

33 (b) All administrative provisions of chapter 18 of title 44 including those which provide
34 for the apportionment of economic activity between that within the tax jurisdiction of the state

1 and such activity outside that jurisdiction, which fix damages, penalties and interest for
2 nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other
3 requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under
4 the provisions of this chapter, and the division of taxation shall exercise all the power and
5 authority and perform all the duties with respect to taxpayers under this chapter as are provided in
6 chapter 18 of title 44, except in the event of a conflict, and then the provisions of this chapter
7 shall control.

8 **44-70-11. Unpaid Taxes a 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 same by
11 suit or otherwise.

12 **44-70-12. 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 tax administrator and their accounts with any bank or banks, and shall verify the amounts
15 collected pursuant to this chapter and paid into the children's health promotion fund. Any duty
16 herein required of the state auditor may be performed by any duly trained clerk in that office,
17 designated by the state auditor for that purpose.

18 **44-70-13. Exercise of Powers and Duties.**

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

22 **44-70-14. Rules and Regulations.**

23 The tax administrator 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 the purposes of this chapter.

26 **44-70-15. 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
29 competent jurisdiction, the remainder of the chapter, rule, or regulation, and the application of the
30 provision to other persons or circumstances shall not be affected. The invalidity of any section or
31 sections or parts of any section of this chapter shall not affect the validity of the remainder of the
32 chapter.

1 SECTION 2. This act shall take effect on January 1, 2019.

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

1 This act would create a tax on sugary drinks with the intent of discouraging excessive
2 consumption of those beverages and would create a dedicated revenue source for programs
3 designed to benefit public health in addition to the ultimate goal of reducing the health and
4 economic costs of obesity in the state.

5 This act would take effect January 1, 2019.

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