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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO TAXATION -- SUGARY DRINKS

Introduced By: Representatives Barros, Messier, Morales, Handy, Alzate, Shanley,
Fogarty, Carson, Amore, and Kislak

Date Introduced: February 24, 2021

Referred To: House Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings.

2 The General Assembly hereby finds and declares the following:

3 (1) Over seventy-nine thousand (79,000) Rhode Island adults report that they have been
4 diagnosed with Type 2 diabetes. An additional three hundred eleven thousand two hundred
5 (311,200) Rhode Island adults are at risk for developing diabetes.

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

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

10 (4) The prevalence of obesity in the United States has increased over the past thirty (30)
11 years. In Rhode Island, obesity rates have increased from eleven and 10/100 percent (11.1 %) in
12 1990 to thirty percent (30 %) in 2019. Low-income populations and communities of color in Rhode
13 Island report higher rates of obesity than non-Hispanic white communities.

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

17 (6) According to nutritional experts, sugary drinks provide little to no nutritional value, but
18 contain massive quantities of added sugars. A twenty ounce (20 oz.) bottle of soda contains
19 approximately sixteen (16) teaspoons of sugar, yet the American Heart Association recommends

1 that Americans consume no more than six (6) to nine (9) teaspoons of sugar per day.

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

6 (8) Studies on the taxation of sugary drinks have estimated a fifty-five to one (55-1) return
7 on investment in health care savings. In Seattle, WA, a one and seventy-five hundredths cent
8 (\$01.75) per ounce tax has generated twenty-four million dollars (\$24,000,000) in revenues
9 annually. Revenues from sugary drink taxes have been invested in low-income communities and
10 communities of color to increase access to healthy foods by funding fruit and vegetable vouchers.

11 (9) One in seven (7) Rhode Island citizens lack reliable access to nutritious, affordable
12 food. Communities of color and low-income communities are more likely to be affected by food
13 insecurity.

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

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

18 CHAPTER 70

19 SUGARY DRINKS TAX

20 **44-70-1. Short title.**

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

22 **44-70-2. Legislative intent.**

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

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

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

29 (3) Reduce the burden of chronic disease in the ocean state.

30 **44-70-3. Definitions.**

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

32 (1) "Beverage for medical use" means a beverage suitable for human consumption and
33 manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize
34 dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for

1 infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical
2 use" shall also mean a "medical food" as defined in section (b)(3) of the Orphan Drug Act (21
3 U.S.C. 360ee(b)(3)); this act defines medical food as "a food which is formulated to be consumed
4 or administered externally under the supervision of a physician and which is intended for the
5 specific dietary management of a disease or condition for which distinctive nutritional
6 requirements, based on recognized scientific principles, are established by medical evaluation."
7 "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any
8 other common names that are derivations thereof.

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

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

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

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

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

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

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

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

33 (10) "Distribution" or "distribute" means to supply to a distributor or retailer, deliver to a
34 retailer, facilitate acquisition by a retailer, or transport into the state for the purpose of selling any

1 sugary drink product in the state, or any combination of these activities.

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

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

6 (13) "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 (14) "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 (15) "Non-caloric sweetener" means any non-caloric substance suitable for human
12 consumption that humans perceive as sweet and includes, without limitation, aspartame,
13 acesulfame-K, neotame, saccharin, sucralose, and stevia. "Non-caloric sweetener" excludes caloric
14 sweeteners. For purposes of this definition, "non-caloric" means a substance that contains fewer
15 than five (5) calories per serving

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

21 (18) "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, vegetable
24 juice, carbonation, or other gas.

25 (19) "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 (20) "Sale" means the transfer of title or possession for valuable consideration regardless
28 of the manner by which the transfer is completed.

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

30 (22) "Sugary drink" means any nonalcoholic beverage, carbonated or noncarbonated,
31 which is intended for human consumption and contains any added caloric sweetener, whether in
32 bottles, prepared from concentrates, served as a fountain beverage, or in any form. "Sugary drink"
33 includes, without limitation, all drinks and beverages commonly referred to as soda, pop, cola, soft
34 drinks, sports drinks, energy drinks, fruit drinks, sweetened iced teas and coffees, and other

1 products with added caloric sweetener, flavored water with added caloric sweetener, and non-
2 alcoholic beverages that may or may not be mixed with alcohol or any other common names that
3 are derivations thereof. As used in this definition, "nonalcoholic beverage" means any beverage
4 that contains less than one-half (1/2) of one percent (1%) alcohol per volume.

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

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

13 **44-70-4. Tax imposed.**

14 (a) Effective January 1, 2022, there is hereby levied and imposed, in addition to all other
15 taxes and fees now imposed by law, a sugary drinks tax on every distributor for the privilege of
16 selling bottled sugary drinks, syrups or powders in the state of Rhode Island, calculated as follows:

17 (1) One and fifty hundredths (1.50) cents per ounce for bottled sugary drinks;

18 (2) The tax on syrups or powders offered for sale, either as syrup or powder or as a sugary
19 drink derived from that syrup or powder, is equal to one and fifty hundredths (1.50) cents per each
20 ounce of sugary drink produced from that syrup or powder. For purposes of calculating the tax, the
21 volume of sugary drink produced from syrups or powders shall be the larger of:

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

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

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

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

33 (c) Sums received by the division of taxation under this section shall be distributed at least
34 quarterly, credited and paid by the state treasurer to the department of human services to fund the

1 retail SNAP incentive program to increase access to and promote consumption of fresh fruits and
2 vegetables as outlined in § 44-70-15(a).

3 **44-70-5. Permit required.**

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

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

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

22 **44-70-6. Report of sales and tax remittances.**

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

29 **44-70-7. Records of distributors.**

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

34 **44-70-8. Exemptions.**

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

2 (1) Bottled sugary drinks, syrups, and powders sold to the United States government and
3 American Indian tribal governments;

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

9 (3) Bottled sugary drinks, syrups, and powders that the division has certified to have been
10 manufactured by a manufacturer with worldwide gross income of less than two million dollars
11 (\$2,000,000) in the prior calendar year. In order for a bottled sugary drink, syrup, or power to be
12 eligible for exemption under this subsection, the manufacturer must apply to the division for
13 certification according to rules established by the director of the division.

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

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

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

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

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

23 (9) Infant formula;

24 (10) Beverages for medical use; or

25 (11) Water without any caloric sweeteners.

26 **44-70-9. Penalties.**

27 (a) Any person subject to the provisions of this chapter who fails to pay the entire amount
28 of tax imposed by this chapter by the date that payment is due, fails to submit a report or maintain
29 records required by this chapter, or violates any other provision of this chapter, or rules and
30 regulations promulgated by the division for the enforcement of this chapter, shall be guilty of a
31 misdemeanor and shall also be liable for the amount of the tax that may be due and a penalty equal
32 to fifty percent (50%) of the tax due. The division, or its duly authorized representative, may
33 determine the amount due in the event of any payment or underpayment that may come to its
34 attention and demand payment of all such taxes and penalties. Interest shall accrue on non- or

1 under-payment of tax at a rate of twelve percent (12%) per year from the date the tax was due until
2 paid. For good reason shown the division may waive all or any part of the penalties imposed, but
3 shall have no power to waive interest.

4 (b) All administrative provisions of chapter 18 of title 44 including those which provide
5 for the apportionment of economic activity between that within the tax jurisdiction of the state and
6 such activity outside that jurisdiction, which fix damages, penalties and interest for nonpayment of
7 taxes and for noncompliance with the provisions of said chapter, and all other requirements and
8 duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of
9 this chapter, and the division shall exercise all the power and authority and perform all the duties
10 with respect to taxpayers under this chapter as are provided in chapter 18 of title 44, except where
11 there is conflict, and then the provisions of this chapter shall control.

12 **44-70-10. Unpaid taxes.**

13 All taxes and penalties imposed under the provisions of this chapter remaining due and
14 unpaid shall constitute a debt to the state, which may be collected from the person owing the same
15 by suit or any other legal remedy available.

16 **44-70-11. Records of the division of taxation.**

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

22 **44-70-12. Exercise of powers and duties.**

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

26 **44-70-13. Rules and regulations.**

27 The director is hereby empowered to make such rules and regulations, and provide such
28 procedural measures, in cooperation with the state auditor, as may be reasonably necessary to
29 accomplish the purposes of this chapter.

30 **44-70-14. Establishment of the retail SNAP incentives program fund.**

31 (a) There shall be established a separate fund to be known as the retail SNAP incentives
32 program (RSIP) fund. The department of human services shall administer the fund. The fund shall
33 consist of revenues from the state generated by the tax imposed by § 44-70-4. The fund shall be
34 expended first for the implementation and administration of a retail SNAP incentives program to

1 promote healthy food access and nutrition among Rhode Island SNAP recipients.

2 (b) SNAP recipients will receive a minimum fifty cent (\$0.50) credit on their electronic
3 benefit transfer (EBT) card for each one dollar (\$1.00) spent on eligible fruits and vegetables at
4 participating RSIP retailers, up to a monthly limit as defined by the department. These credits shall
5 be funded via the RSIP fund established in subsection (a) of this section.

6 **44-70-15. Public reporting and evaluation.**

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

12 (b) The department shall contract with academic researchers to complete an evaluation of
13 the following:

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

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

18 (3) Impacts of programs and initiatives funded by the tax.

19 (c) The evaluations set forth in subsection (b) of this section should specifically address
20 the equity impacts of the tax. Evaluators should develop partnerships with community members to
21 ensure community participation in the evaluation.

22 **44-70-16. Severability.**

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

28 SECTION 3. This act shall take effect upon passage.

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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 upon passage.

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