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**SENATE BILL 5371**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Robinson, Carlyle, Conway, Dhingra, Pedersen, and Saldaña

AN ACT Relating to funding public health services and health equity initiatives through a statewide sweetened beverage tax; amending RCW 82.25.015; adding new sections to chapter 43.70 RCW; and adding a new chapter to Title 82 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  FINDINGS. (1) The legislature makes the following findings with respect to sweetened beverage consumption:

(a) Our nation and our state face a major public health crisis in the form of rising rates of chronic diseases associated with sweetened beverages, including type 2 diabetes, cardiovascular disease, and liver disease; adult and childhood obesity; and tooth decay and poor oral health;

(b) If trends are not reversed, it is predicted that close to half of the United States population is projected to have obesity by 2030;

(c) These diseases disproportionately affect people of color, including African Americans, Native Americans, Alaska Natives, Latinxs, and Native Hawaiians and Pacific Islanders, and people with low incomes, the same people who can be targets of ubiquitous sweetened beverage availability and marketing;

(d) The rate of overweight and obesity among children and adolescents, currently at 30 percent, has more than doubled since the late 1970s; more than half of all third graders (53 percent) and almost four in 10 kindergartners (38 percent) experience tooth decay in Washington state; and children from low-income households had at least 60 percent higher rates of tooth decay;

(e) Sweetened beverages are the largest single source of added sugars in the American diet and among the top sources of calories. Further, sources of liquid sugars may be uniquely harmful to health because of the way liquid sugars are metabolized;

(f) Consuming one sweetened beverage a day increases the risk of developing type 2 diabetes by 26 percent;

(g) At least 682,000 adults (or one in eight) have diabetes, with a fourth not aware they have it. The average medical costs of people with diabetes is approaching $17,000 per person per year, about twice the cost for people without diabetes;

(h) Daily calorie intake among Americans increased by nearly 300 calories between the late 1970s and the early 2000s, and nearly half of that increase in extra calories came from sweetened beverages. There are large age, sex, race, education, and socioeconomic disparities in the consumption of sweetened beverages, with higher consumption among young adults, males, African Americans, Latinxs, and adults with lower education attainment;

(i) Imposing an excise tax on sweetened beverages has been shown to reduce sales of these beverages as demonstrated in places like Seattle, Washington; Philadelphia, Pennsylvania; and Berkeley, California; and

(j) In Seattle, a $0.0175 per fluid ounce tax has increased prices of taxed beverages, decreased sales by 22 percent, and raised approximately $24 million in annual revenues, which have been invested in low-income communities and communities of color to increase access to healthy food, expand early childhood programs and subsidies for child care, and help high school students matriculate to college.

(2) Based on the forgoing, it is the legislature's intent to impose an excise tax on sweetened beverages to:

(a) Lower the sales and consumption of sweetened beverages to reduce the rates and burden of obesity, diabetes, cardiovascular disease, tooth decay, and other adverse health conditions associated with the consumption of these beverages;

(b) Address the negative effects of sweetened beverages that disproportionately affect communities of color and low-income communities to address social determinants of health in disproportionately impacted communities burdened by negative health outcomes, with a particular focus on access to healthy foods, reducing food insecurity, and access to health care, as well as supporting community infrastructure and capacity; and

(c) Promote foundational public health services, as defined in RCW 43.70.515, and greater health equity in local communities throughout Washington.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Beverage for medical use" means:

(i) A beverage suitable for human consumption and manufactured for uses as an:

(A) Oral nutritional therapy for persons who cannot absorb or metabolize caloric or dietary nutrients from usual food or beverages; or

(B) Oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness; or

(ii) Any beverage that meets the statutory definition of "medical food" under the orphan drug act of 1983, 21 U.S.C. Sec. 360ee(b)(3), as amended, as of the effective date of this section.

(b) "Beverage for medical use" does not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.

(2) "Bottled sweetened beverage" means any sweetened beverage contained in a bottle or any other closed container that is ready for consumption without further processing such as, without limitation, dilution or carbonation.

(3) "Caloric sweetener" means any substance or combination of substances that contains calories, is suitable for human consumption, and humans perceive as sweet. Caloric sweeteners include, but are not limited to: Sugar, sucrose, dextrose, fructose, glucose, and other monosaccharides and disaccharides; corn syrup or high fructose corn syrup; honey; and any other such substance designated by the department.

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

(5) "Consumer" means a natural person who purchases a sweetened beverage product in the state for a purpose other than resale in the ordinary course of business and for sale to another.

(6) "Distribution" or "distribute" means to supply to a distributor or retailer, deliver to a retailer, facilitate acquisition by a retailer, or transport into the state for the purpose of selling any sweetened beverage in the state, or any combination of these activities.

(7) "Distributor" means any person, including a manufacturer, bottler, or wholesale dealer, that distributes sweetened beverages in the state for sale to retailers that operate businesses in the state, regardless of whether the person also offers sweetened beverages for retail sale.

(8) "Milk" means natural fluid milk, regardless of animal sources or butterfat content; natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content; and plant-based milk substitutes that are marketed as milk, such as, but not limited to, soy milk, coconut milk, rice milk, and almond milk.

(9) "Natural or common sweetener" means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.

(10) "Nonalcoholic beverage" means a beverage suitable for human consumption and that is not liquor as defined in RCW 66.04.010.

(11) "Retailer" means any person who serves sweetened beverages to a consumer.

(12)(a) "Sweetened beverage" means any beverage intended for human consumption that contains one or more caloric sweeteners, whether in bottles, prepared from concentrates, served as a fountain beverage, or in any other form.

(b) "Sweetened beverage" includes all drinks and beverages commonly referred to as soda, pop, cola, soft drinks, sports drinks, energy drinks, fruit drinks, sweetened ice teas and coffees, and other products with added caloric sweeteners including but not limited to juice with added caloric sweetener, flavored water with added caloric sweetener, and nonalcoholic beverages that may or may not be mixed with alcohol or any other common names that are derivations thereof.

(c) "Sweetened beverage" does not include any of the following:

(i) Any beverage in which natural milk is the primary ingredient, in other words, the ingredient listed first in the product ingredient list; or in which water and grains, nuts, legumes, or seeds constitute the first two ingredients in the product ingredient list;

(ii) Any beverage for medical use;

(iii) Any liquid sold for use as a meal replacement for weight reduction or other purposes;

(iv) Any product commonly referred to as infant formula or baby formula;

(v) Any alcoholic beverage;

(vi) Any beverage consisting of 100 percent natural fruit or vegetable juice with no added sweetener. For the purposes of this subsection, natural fruit juice and natural vegetable juice mean the original liquid resulting from the pressing of fruits or vegetables;

(vii) Any concentrate that the consumer combines with other ingredients to create a beverage;

(viii) Any beverage that contains fewer than 20 calories per 12-ounce serving; or

(ix) Sweetened medication such as cough syrup, liquid pain relievers, fever reducers, and similar products.

NEW SECTION. **Sec.**  TAX IMPOSED. (1) Beginning October 1, 2021, there is a tax imposed upon every person engaging within this state in the business of distributing sweetened beverages. The tax shall be paid upon the first nonexempt distribution of a sweetened beverage drink product in the state. However, if a distributor or a retailer receives taxable products on which the tax has not been paid, the distributor or retailer shall be liable for the tax. The amount of tax with respect to such business is equal to the volume of sweetened beverages the distributor distributes in the state multiplied by the applicable tax rate in subsection (2) or (3) of this section.

(2) For sweetened beverages that are produced from concentrates, the tax is calculated using the largest volume of beverage that would typically be produced by the amount of concentrate distributed based on the manufacturer's instructions or industry practice. Where a product is produced from more than one concentrate, the rate on each component must be calculated proportionately, so that the combined tax on the total yields a tax rate per fluid ounce of resulting beverage as provided under subsection (3) of this section.

(3)(a) For all sweetened beverages, the tax rate is $0.0175 per fluid ounce of sweetened beverages the distributor distributes, as further adjusted under (b) of this subsection (3).

(b) Beginning July 1, 2022, and every July 1st thereafter, the rate specified in (a) of this subsection must be adjusted to reflect the yearly increase of the previous calendar year's annual average consumer price index for all urban consumers, Seattle area, as published by the Washington state economic and revenue forecast council.

(4) Sixty percent of the tax collected under this chapter must be deposited into the health equity account created in section 10 of this act and the remainder must be deposited into the foundational public health services account created under RCW 82.25.015.

NEW SECTION. **Sec.**  EXEMPTIONS. (1) If a person, who is a member of an affiliated group that files a federal consolidated return, pays the tax imposed by section 3 of this act on a distribution of sweetened beverages, then subsequent transfers of those sweetened beverages from that person to members of the affiliated group are not subject to the tax imposed by section 3 of this act. For the purposes of this subsection, "affiliated group" has the same meaning as provided in 26 U.S.C. Sec. 1504(a), as amended as of the effective date of this section.

(2) Persons who are exempt from taxation by the state pursuant to federal or state statutes are exempt from the tax imposed by this chapter.

NEW SECTION. **Sec.**  GENERAL EXCISE TAX IN ADDITION TO OTHER LICENSE FEES AND TAXES. (1) The tax imposed by section 3 of this act is a general excise tax on the privilege of conducting certain business within the state. It is not a sales tax or use tax or other excise tax on the sale, consumption, use, or gross receipts of sweetened beverages.

(2) The tax imposed by section 3 of this act is in addition to any license fee or tax imposed or levied under any other law.

NEW SECTION. **Sec.**  CREDIT. A distributor may take a credit against the tax due under this chapter for the amount of any similar sweetened beverage tax imposed by a city in Washington on the same sweetened beverages. The credit may not exceed the tax due under this chapter.

NEW SECTION. **Sec.**  RULES. Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter. The department must adopt additional rules, as necessary, for the purpose of carrying out the provisions of this chapter including, but not limited to: Rules to clarify the inclusion or exclusion of particular products and the calculation of tax for concentrates based on manufacturer's instructions or industry practice; rules to implement the tax rates provided under section 3 of this act; and rules to designate caloric sweeteners.

NEW SECTION. **Sec.**  Sections 1 through 7 of this act constitute a new chapter in Title 82 RCW.

**Sec.**  RCW 82.25.015 and 2019 c 445 s 103 are each amended to read as follows:

The foundational public health services account is created in the state treasury. Half of all of the moneys collected from the tax imposed on vapor products under RCW 66.44.010 and 40 percent of the revenues specified in section 3 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account are to be used ((~~for the following purposes:~~

~~(1) To~~)) to fund foundational public health services as defined in RCW 43.70.515. ((~~In the 2019-2021 biennium, at least twelve million dollars of the funds deposited into the account must be appropriated for this purpose. Beginning in the 2021-2023 biennium, fifty percent of the funds deposited into the account, but not less than twelve million dollars each biennium, are to be used for this purpose;~~

~~(2) To fund tobacco, vapor product, and nicotine control and prevention, and other substance use prevention and education. Beginning in the 2021-2023 biennium, seventeen percent of the funds deposited into the account are to be used for this purpose;~~

~~(3) To support increased access and training of public health professionals at public health programs at accredited public institutions of higher education in Washington. Beginning in the 2021-2023 biennium, five percent of the funds deposited into the account are to be used for this purpose;~~

~~(4) To fund enforcement by the state liquor and cannabis board of the provisions of this chapter to prevent sales of vapor products to minors and related provisions for control of marketing and product safety, provided that no more than eight percent of the funds deposited into the account may be appropriated for these enforcement purposes.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) The health equity account is created in the state treasury. Sixty percent of the moneys collected from the tax imposed on sweetened beverages under section 3 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account must be used to address social determinants of health in disproportionately impacted communities burdened by negative health outcomes, with a particular focus on access to healthy foods, reducing food insecurity, and access to health care, as well as supporting community infrastructure and capacity.

(2) All moneys in the account shall be expended only for the purposes expressed in this section and shall be used only to supplement existing levels of service. Moneys in the account may not supplant any federal, state, or local funding for existing levels of service.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) The department shall use fund allocation approaches that engage community residents, organizations, and leaders in identifying priorities and implementing projects and initiatives that reflect community values and priorities.

(2) The department shall provide, annually and no later than three months after the end of the fiscal year, information about tax revenues received and the programs and initiatives funded by these revenues to inform distributors, retailers, and the general public about the tax.

(3)(a) A community advisory board is created within the department to make recommendations to the department on the allocation disbursement of funds received to support initiatives addressing social determinants of health pursuant to section 10 of this act. The community advisory board may also have a direct role in the reviewing and awarding of grants.

(b) The board shall consult the office of equity and the governor's interagency council on health disparities when making its recommendations.

(c) The community advisory board shall consist of nine members appointed by the governor. The members must represent diverse geography and identity, including those who are disproportionately impacted by the effects of sugar-sweetened beverage consumption and who are being targeted by advertising for sugar-sweetened beverages.

(d) The community advisory board is staffed by the department and is encouraged to create technical advisory work groups as needed.

(e) Community advisory board members shall be entitled to compensation of $50 per day for each day spent conducting official business and for reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

(f) The community advisory board must prepare an annual report, posted on the department's website, detailing the amount of funds in the health equity account and any unspent funds, its recommendations, and the programs and initiatives implemented with the allocated funding.

(g) The community advisory board may adopt bylaws for the operation of its business for the purposes of this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

The department shall contract with academic researchers to complete a comprehensive evaluation of: (1) The effects of the tax on sweetened beverage prices and on sales and consumption one and three years after tax implementation; (2) the economic impacts of the tax, including employment and business revenues in affected business sectors one and three years after tax implementation; and (3) the impacts of programs and initiatives funded by the tax. The evaluations should specifically address the equity impacts of the tax and funded programs and initiatives. Evaluators should develop partnerships with community members to ensure community participation in the evaluation.

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