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**HOUSE BILL 1975**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Jinkins, Robinson, Doglio, Stonier, Cody, Pollet, Dolan, Riccelli, Macri, Peterson, Ormsby, and Kagi

AN ACT Relating to a tax on sugar-sweetened beverages; adding a new chapter to Title 82 RCW; repealing RCW 82.64.010, 82.64.020, 82.64.025, 82.64.030, 82.64.040, 82.64.050, 82.64.901, and 82.64.902; and providing an effective date.

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

NEW SECTION. **Sec.**  INTENT. (1) The legislature finds that both children and adults in the United States are eating and drinking added sugar in excess of the daily recommended amount. The legislature further finds that the daily consumption of sugary drinks by a child increases that child's chances of obesity by fifty-five percent and that daily consumption of sugary drinks by an adult increases that adult's risk of tooth decay by thirty percent. The legislature also finds that in 2012 approximately twenty-three percent of tenth graders in Washington were overweight or obese.

(2) The legislature finds that almost half of all added sugars consumed come from sugary drinks, such as soft drinks, energy drinks, fruit-flavored drinks, sweetened tea and coffee, flavored waters, and sports drinks, which offer little or no nutritional value.

(3) The legislature finds that sugary drinks are marketed as a daily refreshment, particularly to children, youth, and communities of color. The legislature also finds that a 2013 study found that African-American children saw over twice as many television advertisements for sugary and energy drinks than the white youth. The legislature also finds that half of the adults and two-thirds of the children in the United States consume one or more sugary drinks on any given day.

(4) The legislature finds that Americans are exposed to three times the amount of sugary drinks as sixty years ago and the per capita consumption of sugary drinks exceeds forty gallons per year. The legislature finds that Washingtonians consume an average of twenty-two gallons per person per year. The legislature finds this level of consumption put adults and children at an increased risk for many serious chronic diseases, including type 2 diabetes, heart disease, and hypertension. The legislature also finds that as of 2012, nine percent of Washington's population were diagnosed with diabetes, and over one-third of Washington adults have prediabetes. The legislature finds that sugary drinks can be traced to more than one hundred eighty-four thousand deaths per year world-wide. The legislature finds that imposing an excise tax on sugary drinks is the most cost-effective way of reducing the negative health impact on the people of Washington.

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

(1) "Alcoholic beverages" means any beverage regulated under chapter 66.04 RCW.

(2) "Beverage for medical use" means:

(a) Any beverage suitable for human consumption and manufactured for use as:

(i) An oral nutritional therapy for persons who cannot absorb or metabolize caloric or dietary nutrients from usual food or beverages;

(ii) An oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness; or

(iii) Any beverage that meets the statutory definition of "medical food" under the orphan drug act in Title 21 U.S.C. Sec. 360ee(b)(3).

(b) Beverages for medical use do not include drinks commonly referred to and marketed as "sports drinks," "energy drinks," or any other common names derived thereof.

(3) "Caloric sweetener" means a substance or combination of substances suitable for human consumption that adds calories to and is perceived as sweet to humans when consumed, including but not limited to sucrose, dextrose, fructose, glucose, other mon and disaccharides; corn syrup or high fructose corn syrup; or any other caloric sweetener designated by the department of health.

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

(5) "Diet beverage" means a beverage for human consumption that contains an artificial noncaloric or low caloric sweetener, including, but not limited to, aspartame, cyclamates, saccharin, sucralose, acesulfame potassium, stevia, or any other noncaloric or low caloric sweetener designated by the department of health.

(6) "Diet powder" means any fine, dry particles containing one or more diet sweeteners as an ingredient to be used in making, mixing, or compounding a diet beverage by combining the powder with one or more ingredients.

(7) "Diet sweetener" means any substance or combination of substances for human consumption that contains an artificial noncaloric or low caloric sweetener, including, but not limited to, aspartame, cyclamates, saccharin, sucralose, acesulfame potassium, stevia, or any other noncaloric or low caloric sweetener designated by the department of health.

(8) "Diet syrup" means any liquid mixture containing one or more diet sweeteners as an ingredient to be used in making, mixing, or compounding a diet beverage by combining the syrup with one or more other ingredients.

(9) "Diet syrup for home consumption" means any liquid mixture containing one or more diet sweeteners as an ingredient that is packaged and sold at retail to consumers for use at home, where it may be used in making, mixing, or compounding a diet beverage.

(10) "Distribution" means the transfer of title or possession from one person to another for consideration or within a single business entity, such as by wholesale or warehousing unit to retail outlet or between two or more employees or contractors. "Distribution" or "distribute" does not mean a retail sale to a consumer.

(11) "Distributor" means any person who distributes sugar-sweetened beverage products in this state.

(12) "Milk product" means any beverage:

(a) That lists natural milk as the primary or first ingredient in the product ingredient list; or

(b) In which water and grains, nuts, legumes, or seeds constitute the first two ingredients in the product ingredient list.

(13) "Natural fruit juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated fruit juice.

(14) "Natural milk" means:

(a) Natural fluid milk, regardless of animal source or butterfat content;

(b) Natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content;

(c) Dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content; and

(d) Plant-based milk substitutes that are marketed as milk, such as but not limited to soy milk, coconut milk, rice milk, and almond milk.

(15) "Natural vegetable juice" means the original liquid resulting from the pressing of one or more vegetables, the liquid resulting from the reconstitution of vegetable juice concentrate or the liquid resulting from the restoration of water to dehydrated vegetable juice.

(16) "Powder" means any fine, dry particles containing one or more caloric sweeteners as an ingredient to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the powder with one or more ingredients.

(17) "Prepackaged beverage" means a beverage that is in bottles, cans, plastic containers, or other containers that are ready for retail sale.

(18) "Sugar-sweetened beverage" means any beverage intended for human consumption that contains one or more caloric sweeteners whether packaged for retail consumption, prepared from concentrate, served as a fountain beverage, or in any other form.

(19) "Syrup" means any liquid mixture containing one or more caloric sweeteners as an ingredient to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the syrup with one or more other ingredients.

(20) "Syrup for home consumption" means any liquid mixture containing one or more caloric sweeteners as an ingredient that is packaged and sold at retail to consumers for use at home, where it may be used in making, mixing, or compounding a sugar-sweetened beverage.

NEW SECTION. **Sec.**  TAX ON SUGAR-SWEETENED BEVERAGES. (1) A tax is imposed on the first sale of prepackaged sugar sweetened beverages made by a distributor in this state. The rate of the tax is equal to two cents per fluid ounce.

(2) A tax is imposed on syrup or powder sold or offered for sale to a retailer for sale in this state to a consumer, either as syrup or powder, or as a sugar-sweetened beverage derived from that syrup or powder, that is equal to two cents per fluid ounce. For the purposes of calculating the tax under this section, the volume of sugar sweetened beverage produced from syrup or powder is the larger of:

(a) The largest volume resulting from the use of the syrup or powder according to any manufacturer's instructions; or

(b) The volume actually produced by the retailer, as reasonably determined by the department.

(3) If there is a comparable tax imposed by a local jurisdiction in this state on sugar-sweetened beverages, there must be a credit against the amount due under this section equal to the local tax paid by the distributor. A refund over this section is only allowed if the local rate is less than the rate imposed under this section.

NEW SECTION. **Sec.**  TAX ON DIET BEVERAGES. (1) A tax is imposed on the first sale of prepackaged diet beverages made by a distributor in this state. The rate of the tax is equal to two cents per fluid ounce.

(2) A tax is imposed on diet syrup or diet powder sold or offered for sale to a retailer for sale in this state to a consumer, either as diet syrup or diet powder or as a diet beverage derived from that diet syrup or diet powder that is equal to two cents per fluid ounce. For the purposes of calculating the tax under this section, the volume of diet beverage produced from the diet syrup or diet powder is the larger of:

(a) The largest volume resulting for the use of the diet syrup or diet powder according to any manufacturer's instructions; or

(b) The volume actually produced by the retailer, as reasonably determined by the department.

(3) If there is a comparable tax imposed by a local jurisdiction in this state on diet beverages, there must be a credit against the amount due under this section equal to the local tax paid by the distributor. A refund over this section is only allowed if the local rate is less than the rate imposed under this section.

NEW SECTION. **Sec.**  EXEMPTIONS. The following items are exempt from the tax imposed under this chapter:

(1) Beverages with milk as principal ingredient;

(2) Beverages for medical use;

(3) Liquids sold for use as meal replacement;

(4) Infant formulas;

(5) Sweetened medications;

(6) One hundred percent natural vegetable and fruit juices;

(7) Alcoholic beverages; and

(8) Syrups and diet syrups intended for home use.

NEW SECTION. **Sec.**  DISTRIBUTION OF FUNDS. All funds collected under this chapter must be deposited as follows:

(1) Fifty percent of the funds must be deposited into the public health supplemental account; and

(2) Fifty percent of the funds must be deposited into the education legacy trust fund.

NEW SECTION. **Sec.**  SYRUP TAX REPEAL. The following acts or parts of acts are each repealed:

(1)RCW 82.64.010 (Definitions) and 1994 sp.s. c 7 s 905, 1991 c 80 s 1, & 1989 c 271 s 505;

(2)RCW 82.64.020 (Tax imposed—Wholesale, retail—Revenue deposited in the general fund) and 2009 c 479 s 72, 1994 sp.s. c 7 s 906, 1991 c 80 s 2, & 1989 c 271 s 506;

(3)RCW 82.64.025 (Tax preferences—Expiration dates) and 2013 2nd sp.s. c 13 s 1720;

(4)RCW 82.64.030 (Exemptions) and 1994 sp.s. c 7 s 907, 1991 c 80 s 3, & 1989 c 271 s 507;

(5)RCW 82.64.040 (Credit against tax) and 1994 sp.s. c 7 s 908, 1991 c 80 s 7, & 1989 c 271 s 508;

(6)RCW 82.64.050 (Wholesaler to collect tax from buyer) and 1991 c 80 s 4;

(7)RCW 82.64.901 (Effective dates—1989 c 271); and

(8)RCW 82.64.902 (Severability—1989 c 271).

NEW SECTION. **Sec.**  ADMINISTRATION. This act must be administered by the department under chapter 82.32 RCW.

NEW SECTION. **Sec.**  REPORTING REQUIREMENTS. The joint legislative audit and review committee must evaluate the impact of the sugar-sweetened beverage tax on the consumption of such beverages by Washington residents. The committee must develop a report that includes an evaluation of the data on consumption by Washington residents before and after the implementation of the tax in this chapter, any relevant health data, the amount of revenue collected and how the funds were spent. The department of health and the department of revenue must provide the joint legislative audit and review committee access to any data necessary to conduct the evaluation under this section. By December 31, 2022, and in compliance with RCW 43.01.036, the joint legislative audit and review committee must submit the report required under this section to the legislature and the committee must submit an updated report to the legislature every biennium thereafter.

NEW SECTION. **Sec.**  NEW CHAPTER CREATION. Sections 1 through 9 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  EFFECTIVE DATE. This act takes effect January 1, 2018.

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