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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

Read first time 01/28/21. Referred to Committee on Health & Long Term Care.

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

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

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

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

13 (b) If trends are not reversed, it is predicted that close to  
14 half of the United States population is projected to have obesity by  
15 2030;

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

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

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

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
12 section apply throughout this chapter unless the context clearly  
13 requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) "Sweetened beverage" includes all drinks and beverages  
38 commonly referred to as soda, pop, cola, soft drinks, sports drinks,  
39 energy drinks, fruit drinks, sweetened ice teas and coffees, and  
40 other products with added caloric sweeteners including but not

1 limited to juice with added caloric sweetener, flavored water with  
2 added caloric sweetener, and nonalcoholic beverages that may or may  
3 not be mixed with alcohol or any other common names that are  
4 derivations thereof.

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

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

10 (ii) Any beverage for medical use;

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

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

15 (v) Any alcoholic beverage;

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

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

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

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

26 NEW SECTION. **Sec. 3.** TAX IMPOSED. (1) Beginning October 1,  
27 2021, there is a tax imposed upon every person engaging within this  
28 state in the business of distributing sweetened beverages. The tax  
29 shall be paid upon the first nonexempt distribution of a sweetened  
30 beverage drink product in the state. However, if a distributor or a  
31 retailer receives taxable products on which the tax has not been  
32 paid, the distributor or retailer shall be liable for the tax. The  
33 amount of tax with respect to such business is equal to the volume of  
34 sweetened beverages the distributor distributes in the state  
35 multiplied by the applicable tax rate in subsection (2) or (3) of  
36 this section.

37 (2) For sweetened beverages that are produced from concentrates,  
38 the tax is calculated using the largest volume of beverage that would  
39 typically be produced by the amount of concentrate distributed based

1 on the manufacturer's instructions or industry practice. Where a  
2 product is produced from more than one concentrate, the rate on each  
3 component must be calculated proportionately, so that the combined  
4 tax on the total yields a tax rate per fluid ounce of resulting  
5 beverage as provided under subsection (3) of this section.

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

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

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

19 NEW SECTION. **Sec. 4.** EXEMPTIONS. (1) If a person, who is a  
20 member of an affiliated group that files a federal consolidated  
21 return, pays the tax imposed by section 3 of this act on a  
22 distribution of sweetened beverages, then subsequent transfers of  
23 those sweetened beverages from that person to members of the  
24 affiliated group are not subject to the tax imposed by section 3 of  
25 this act. For the purposes of this subsection, "affiliated group" has  
26 the same meaning as provided in 26 U.S.C. Sec. 1504(a), as amended as  
27 of the effective date of this section.

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

31 NEW SECTION. **Sec. 5.** GENERAL EXCISE TAX IN ADDITION TO OTHER  
32 LICENSE FEES AND TAXES. (1) The tax imposed by section 3 of this act  
33 is a general excise tax on the privilege of conducting certain  
34 business within the state. It is not a sales tax or use tax or other  
35 excise tax on the sale, consumption, use, or gross receipts of  
36 sweetened beverages.

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

1        NEW SECTION.    **Sec. 6.**    CREDIT. A distributor may take a credit  
2 against the tax due under this chapter for the amount of any similar  
3 sweetened beverage tax imposed by a city in Washington on the same  
4 sweetened beverages. The credit may not exceed the tax due under this  
5 chapter.

6        NEW SECTION.    **Sec. 7.**    RULES. Chapter 82.32 RCW applies to the  
7 tax imposed in this chapter. The tax due dates, reporting periods,  
8 and return requirements applicable to chapter 82.04 RCW apply equally  
9 to the tax imposed in this chapter. The department must adopt  
10 additional rules, as necessary, for the purpose of carrying out the  
11 provisions of this chapter including, but not limited to: Rules to  
12 clarify the inclusion or exclusion of particular products and the  
13 calculation of tax for concentrates based on manufacturer's  
14 instructions or industry practice; rules to implement the tax rates  
15 provided under section 3 of this act; and rules to designate caloric  
16 sweeteners.

17        NEW SECTION.    **Sec. 8.**    Sections 1 through 7 of this act  
18 constitute a new chapter in Title 82 RCW.

19        **Sec. 9.**    RCW 82.25.015 and 2019 c 445 s 103 are each amended to  
20 read as follows:

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

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

35        ~~(2) To fund tobacco, vapor product, and nicotine control and~~  
36 ~~prevention, and other substance use prevention and education.~~

1 ~~Beginning in the 2021-2023 biennium, seventeen percent of the funds~~  
2 ~~deposited into the account are to be used for this purpose;~~

3 ~~(3) To support increased access and training of public health~~  
4 ~~professionals at public health programs at accredited public~~  
5 ~~institutions of higher education in Washington. Beginning in the~~  
6 ~~2021-2023 biennium, five percent of the funds deposited into the~~  
7 ~~account are to be used for this purpose;~~

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

14 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.70  
15 RCW to read as follows:

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

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

31 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.70  
32 RCW to read as follows:

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

37 (2) The department shall provide, annually and no later than  
38 three months after the end of the fiscal year, information about tax



1 revenues received and the programs and initiatives funded by these  
2 revenues to inform distributors, retailers, and the general public  
3 about the tax.

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

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

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

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

20 (e) Community advisory board members shall be entitled to  
21 compensation of \$50 per day for each day spent conducting official  
22 business and for reimbursement for travel expenses as provided by RCW  
23 43.03.050 and 43.03.060.

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

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

31 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.70  
32 RCW to read as follows:

33 The department shall contract with academic researchers to  
34 complete a comprehensive evaluation of: (1) The effects of the tax on  
35 sweetened beverage prices and on sales and consumption one and three  
36 years after tax implementation; (2) the economic impacts of the tax,  
37 including employment and business revenues in affected business  
38 sectors one and three years after tax implementation; and (3) the  
39 impacts of programs and initiatives funded by the tax. The

1 evaluations should specifically address the equity impacts of the tax  
2 and funded programs and initiatives. Evaluators should develop  
3 partnerships with community members to ensure community participation  
4 in the evaluation.

--- **END** ---