

SENATE No. 1709**The Commonwealth of Massachusetts**

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote healthy alternatives to sugary drinks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/28/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/30/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/30/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2019</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/1/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/1/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/1/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>2/7/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/11/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/11/2019</i>

SENATE No. 1709

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1709) of Jason M. Lewis, Kay Khan, Michael J. Barrett, Jennifer E. Benson and other members of the General Court for legislation to promote healthy alternatives to sugary drinks. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1562 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to promote healthy alternatives to sugary drinks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Massachusetts General Laws, as appearing in the 2018 Official Edition,
2 are hereby amended by inserting after chapter 64N the following new chapter:-

3 Chapter 64O. SUGARY DRINK TAX

4 Section 1. Definitions.

5 (a) For the purposes of this section, the following words shall have the following
6 meanings:

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

infants and children formulated to prevent or treat dehydration due to illness. “Beverage for medical use” shall also mean a “medical food” as defined in section 5(b)(3) of the Orphan Drug Act (21

U.S.C. 360ee(b)(3)); this Act defines medical food as “a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.” “Beverage for medical use” shall not include drinks commonly referred to as “sports drinks” or any other common names that are derivations thereof.

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

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

(4) “Commissioner” means the commissioner of revenue and his or her authorized agents and employees.

(5) “Commonwealth” means the commonwealth of Massachusetts.

(6) “Consumer” means a person who purchases a sugary drink for consumption and not for sale to another.

(7) “Department” means the department of public health.

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

(9) "Fund" means the Children's Health Promotion Fund, established pursuant to section 5.

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

(11) "Natural fruit juice" means the original liquid resulting from the pressing of fruits, or the liquid resulting from the dilution with water of dehydrated natural fruit juice.

(12) "Natural vegetable juice" means the original liquid resulting from the pressing of vegetables, or the liquid resulting from the dilution with water of dehydrated natural vegetable juice.

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

(14) "Person" means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee or any other legal entity.

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

(16) "Powder" means any solid mixture of ingredients used in making, mixing, or compounding sugary drinks by mixing the powder with any one or more other ingredients, including without limitation water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation or other gas.

(17) "Retailer" means any person who sells or otherwise dispenses in the commonwealth a sugary drink to a consumer whether or not that person is also a distributor as defined in this section.

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

(19) "Sugars" means any monosaccharide or disaccharide nutritive sweetener such as glucose, fructose, lactose, and sucrose. Examples include, without limitation, cane sugar, beet sugar, high-fructose corn syrup, honey, fruit juice concentrate, and other caloric sweeteners. For purposes of this definition, "nutritive" means a substance that contains 5 or more calories per serving.

(20) "Sugary drink" means any nonalcoholic beverage, carbonated or noncarbonated, which is intended for human consumption and contains any added sugars. As used in this

definition, "nonalcoholic beverage" means any beverage that contains less than one-half of one percent alcohol per volume.

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

(22) "Water", means no-calorie liquid water, which is either non-flavored or flavored without the use of sugars. "Water" may be carbonated (including club soda and seltzer), still, distilled and/or purified.

Section 2. Tax imposed.

(a) There is hereby imposed an excise tax on every distributor for the privilege of selling the products governed by this chapter in the commonwealth, calculated as follows:

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

(i.) Beverages with 7.5 grams of sugars or less per 12 fluid ounces will not be taxed.

(ii.) Beverages with more than 7.5 grams but less than 30 grams of sugars per 12 fluid ounces will be taxed at a rate of \$0.01 per ounce.

(iii.) Beverages with 30 grams of sugars or more per 12 fluid ounces will be taxed at a rate of

\$0.02 per ounce.

(2) Syrups and powders sold or offered for sale to a retailer for sale in the State to a consumer, either as syrup or powder or as a sugary drink derived from that syrup or powder, are taxable. Syrups and powders shall be taxed using the following tiered system:

(i.) If the beverages made from the syrup or powder have 7.5 grams of sugars or less per 12 fluid ounces, the syrup or powder will not be taxed.

(ii.) If the beverages made from the syrup or powder have more than 7.5 grams but less than 30 grams of sugars per 12 fluid ounces, the syrup or powder will be taxed at a rate equal to \$0.01 per ounce of sugary drink produced from that syrup or powder.

(iii.) If the beverages made from the syrup or powder have 30 grams of sugars or more per 12 fluid ounces, the syrup or powder will be taxed at a rate equal to \$0.02 per ounce of sugary drink produced from that syrup or powder.

For purposes of calculating the tax, the volume of sugary drink produced from syrups or powders shall be the larger of (i) the largest volume resulting from use of the syrups or powders according to any manufacturer's instructions, or (ii) the volume actually produced by the retailer, as reasonably determined by the commissioner;

(3) The Nutrition Facts product label, as required by the Food and Drug Administration, shall be used to determine the amount of sugars per 12 ounces of sugary drink by referencing the "Serving Size" and "Sugars" or "Total Sugars" lines on the label.

(4) The tax amounts set forth in this section shall be adjusted annually by the commissioner in proportion with the Consumer Price Index: All Urban Consumers for All Items

109 for the Northeast Region Statistical Area as reported by the United States Bureau of Labor
110 Statistics or any successor to that index.

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

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

116 (c) The taxes imposed by this section are in addition to any other taxes that may apply to
117 persons or products subject to this chapter.

118 Section 3. Report of Sales and Tax Remittances.

119 Any distributor or retailer liable for the tax imposed by this chapter shall, on or before the
120 last day of March, June, October, and December of each year, return to the commissioner under
121 oath of a person with legal authority to bind the distributor or retailer, a statement containing his
122 or her name and place of business, the quantity of sugary drinks, syrups and powders subject to
123 the excise tax imposed by this chapter sold or offered for sale in the 3 months immediately
124 preceding the month in which the report is due, and any other information required by the
125 commissioner, along with the tax due.

126 Section 4. Records of Distributors

127 Every distributor, and every retailer subject to this chapter, shall maintain for not less
128 than 2 years accurate records, showing all transactions that gave rise, or may have given rise, to

129 tax liability under this chapter. Such records are subject to inspection by the commissioner at all
130 reasonable times during normal business hours.

131 Section 5. Exemptions.

132 (a) The following shall be exempt from the tax imposed by this chapter:

133 (1) Bottled sugary drinks, syrups, and powders sold to the United States Government and
134 American Indian Tribal Governments;

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

140 (3) Beverages sweetened solely with non-nutritive sweeteners;

141 (4) Beverages consisting of 100 per cent natural fruit or vegetable juice with no added
142 sugars;

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

145 (6) Coffee or tea without added sugars;

146 (7) Infant formula;

147 (8) Beverages for medical use;

148 (9) Water without added sugars.

149 Section 6. Unpaid Taxes and Debt.

150 All taxes imposed under the provisions of this chapter remaining due and unpaid shall
151 constitute a debt to the commonwealth, which may be collected from the person owing same by
152 suit or otherwise.

153 Section 7. Records of commissioner.

154 At the end of each month, the auditor of the commonwealth shall carefully check the
155 books and records of the commissioner and his accounts with any bank or banks, and shall verify
156 the amounts collected pursuant to this chapter and paid into the Children's Health Promotion
157 Fund. Any duty herein required of the auditor of the commonwealth may be performed by any
158 duly trained clerk in his office, designated by the auditor of the commonwealth for that purpose.

159 Section 8. Exercise of Powers and Duties.

160 Whenever in this chapter any reference is made to any power or duty of the
161 commissioner, the reference is construed to mean that the power or duty shall be exercised by the
162 commissioner, under the supervision and direction of the commissioner.

163 Section 9. Rules and Regulations.

164 The commissioner is hereby empowered to make such rules and regulations, and provide
165 such procedural measures, in cooperation with the auditor of the commonwealth, as may be
166 reasonably necessary to accomplish the purposes of this chapter.

167 Section 10. Severability.

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

SECTION 2. The Massachusetts General Laws, as appearing in the 2014 Official Edition, are hereby amended by inserting after Section 2I of Chapter 111 the following new chapter:-

Section 2J. CHILDRENS HEALTH PROMOTION FUND

(a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Children's Health Promotion Fund. The department of public health shall administer

the fund. The fund shall consist of revenues from the commonwealth generated by the tax imposed by Chapter 64O, section 2. The fund shall be expended first for the implementation, administration, and enforcement of Chapter 64O. Unexpended balances shall be allocated in a proportion to be determined by the department of public health. Qualifying programs funded under Chapter 64O shall include but not be limited to:

(i.) Expansion of Mass in Motion as funded in item 4513-1111 of section 2 of chapter 133 of the acts of 2016.

(ii.) Expansion of the Prevention and Wellness Trust Fund established in section 2G of chapter

189 111.

190 (iii.) A municipal grant program for the fluoridation of public water supplies.

191 (iv.) Funding for the department of early education and care to support and promote
192 nutrition programs for preschools, nursery schools, and child care facilities serving low-income
193 communities.

194 (v.) Development and promotion of educational materials with the intent of educating
195 citizens about the health effects of consuming sugary drinks and to promote the consumption of
196 tap water.

197 (vi.) A municipal grant program for the creation and improvement of water fountains,
198 improvement of water quality, and increasing water access in schools and municipal parks and
199 facilities.

200 (vii.) Other evidence-based methods of improving children's health and wellness.