

SENATE No. 1914

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>2/8/2021</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/25/2021</i> |
| <i>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | <i>2/25/2021</i> |
| <i>Harriette L. Chandler</i> | <i>First Worcester</i> | <i>2/25/2021</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | <i>2/25/2021</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>2/25/2021</i> |
| <i>Carmine Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>2/25/2021</i> |
| <i>Patrick Joseph Kearney</i> | <i>4th Plymouth</i> | <i>3/1/2021</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>3/4/2021</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>3/8/2021</i> |
| <i>Carol A. Doherty</i> | <i>3rd Bristol</i> | <i>3/31/2021</i> |
| <i>Brendan P. Crighton</i> | <i>Third Essex</i> | <i>4/7/2021</i> |
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | <i>5/17/2021</i> |
| <i>David Henry Argosky LeBoeuf</i> | <i>17th Worcester</i> | <i>8/16/2021</i> |

SENATE No. 1914

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1914) of Jason M. Lewis, Kay Khan, Jack Patrick Lewis, Joanne M. Comerford 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. 1709 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 2020 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

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

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

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

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

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

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

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

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

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

34 (9) "Fund" means the Children's Health Promotion Fund, established pursuant to section
35 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

79 Section 2. Tax imposed.

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

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

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

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

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

88 \$0.02 per ounce.

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

92 (i.) If the beverages made from the syrup or powder have 7.5 grams of sugars or less per
93 12 fluid ounces, the syrup or powder will not be taxed.

94 (ii.) If the beverages made from the syrup or powder have more than 7.5 grams but less
95 than 30 grams of sugars per 12 fluid ounces, the syrup or powder will be taxed at a rate equal to
96 \$0.01 per ounce of sugary drink produced from that syrup or powder.

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

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

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

107 (4) The tax amounts set forth in this section shall be adjusted annually by the
108 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 (10) Unsweetened drinks to which a purchaser can add, or can request that a seller add,
150 sugar or a sweetener at the point of sale.

151 Section 6. Unpaid Taxes and Debt.

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

155 Section 7. Records of commissioner.

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

161 Section 8. Exercise of Powers and Duties.

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

165 Section 9. Rules and Regulations.

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

169 Section 10. Grant of Local Authority

170 Nothing in this chapter shall preempt or prohibit adoption and implementation of any
171 policy related to sugary drinks, including taxation, by a municipal government or political
172 subdivision of the commonwealth.

173 Section 11. Severability.

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

180 SECTION 2. The Massachusetts General Laws, as appearing in the 2020 Official Edition,
181 are hereby amended by inserting after Section 2I of Chapter 111 the following new chapter:-

182 Section 2J. COMMONWEALTH HEALTH PROMOTION FUND

183 There shall be established and set up on the books of the commonwealth a separate fund
184 to be known as the Commonwealth's Health Promotion Fund. The fund shall consist of revenues
185 from the commonwealth generated by the tax imposed by Chapter 64O, section 2. The
186 department of public health shall administer the fund. The commissioner, in consultation with

187 the Commonwealth's Health Promotion Advisory Board established under section 2K, shall
188 make expenditures from the fund consistent with subsections (3 (i, ii, iii, iv and v)) provided that
189 not more than 10 per cent of the amounts held in the fund in any one year shall be used by the
190 department for the combined cost of the program administration, technical assistance or program
191 evaluation.

192 (2) Unexpended balances shall be allocated in a proportion to be determined by the
193 department of public health, with at least 50 percent of total revenue dedicated to benefits,
194 services, and programs for communities most impacted by health inequity and burdened by
195 health outcomes such as obesity, diabetes, and heart disease.

196 (3) Qualifying programs funded under Chapter 64O shall include but not be limited to:

197 (i.) Funding for access to community health care

198 (ii) Expansion of the SNAP Healthy Incentive Program as funded in item 4400-1004 of
199 section 2 of chapter XX of the acts of 2020.

200 (iii.) Funding for the department of elementary and secondary education to support and
201 promote nutrition programs K-12 schools serving low-income communities

202 (iv.) Funding for the department of early education and care to support and promote
203 nutrition programs for preschools, nursery schools, and childcare facilities serving low-income
204 communities.

205 (v.) A municipal grant program for the creation and improvement of water fountains,
206 installation of water filling stations, improvement of water quality, and increasing water access
207 in schools and early education facilities serving low-income communities.

208 Section 2K. COMMONWEALTH HEALTH PROMOTION ADVISORY BOARD

209 Section 2K. There shall be a Commonwealth's Health Promotion Advisory Board to
210 make recommendations to the commissioner concerning the administration and allocation of the
211 Commonwealth's Health Promotion Fund established in section 2J, establish evaluation criteria
212 and perform any other functions specifically granted to it by law.

213 The board shall consist of: the commissioner of public health or a designee, who shall
214 serve as chairperson; the house and senate chairs of the joint committee on public health; the
215 house and senate chairs of the joint committee on health care financing; the secretary of health
216 and human services or a designee; and 16 persons to be appointed by the governor, 1 of whom
217 shall be a person with expertise in the field of public health economics; 1 of whom shall be a
218 person with expertise in public health research; 1 of whom shall be a person with expertise in the
219 field of health equity; 1 of whom shall be a person from a local board of health for a city or town
220 with a population greater than 50,000; 1 of whom shall be a person of a board of health for a city
221 or town with a population of fewer than 50,000; 1 of whom shall be representatives of a
222 community health center; 1 of whom shall be a person from a community hospital, 1 of whom
223 shall be a person from a consumer health organization; 1 of whom shall be a person from a
224 hospital association; 1 of whom shall be a person from a statewide public health organization; 1
225 of whom shall be a representative of the interest of businesses; 1 of whom shall be from an
226 hunger organization; 1 of whom shall be from a food systems collaborative; 1 of whom shall
227 administer an employee assistance program; 1 of whom shall be a public health nurse or a school
228 nurse; and 1 of whom shall be a person from school food services .

229 Section 2L Evaluation of the Commonwealth's Health Promotion Fund

230 (1) The department of public health shall, under the advice and guidance of the
231 Commonwealth's Health Promotion Advisory Board, annually report on its strategy for
232 administration and allocation of the fund, including relevant evaluation criteria. The report shall
233 set forth the rationale for such strategy, including, but not limited to: (1) a list of the most
234 prevalent preventable health conditions in the commonwealth, including health disparities
235 experienced by populations based on race, ethnicity, gender, disability status, sexual orientation
236 or socio-economic status; (2) a list of the most costly preventable health conditions in the
237 commonwealth; (3) a list of evidence-based or promising community-based programs related to
238 the conditions identified in clauses. The report shall recommend specific areas of focus for
239 allocation of funds.

240 (2) The department of public health shall promulgate regulations necessary to carry out
241 this section.