

HOUSE No. 2859

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan and Jon Santiago

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:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/17/2023</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>1/27/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/31/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2023</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>2/7/2023</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/9/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>2/13/2023</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/15/2023</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>3/20/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>5/30/2023</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>5/31/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>5/31/2023</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>	<i>6/6/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>6/8/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>7/5/2023</i>

HOUSE No. 2859

By Representatives Khan of Newton and Santiago of Boston, a petition (accompanied by bill, House, No. 2859) of Kay Khan, Jon Santiago and others for legislation to impose an excise tax on distributors of certain drinks with added sugar and promoting healthy alternatives to such drinks. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2972 OF 2021-2022.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
—————

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
8 and manufactured for use as an oral nutritional therapy for persons who cannot absorb or

9 metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte
10 solution for infants and children formulated to prevent or treat dehydration due to illness.

11 “Beverage for medical use” shall also mean a “medical food” as defined in section 5(b)(3) of the
12 Orphan Drug 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,
20 including, 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
23 for consumption without further processing such as, without limitation, dilution or carbonation.

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

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

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

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

30 (8) "Distributor" means any person, including manufacturers and wholesale dealers,
31 who 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 Commonwealth's Health Promotion Fund, established pursuant
35 to section 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,
40 or 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
59 commonwealth a sugary drink to a consumer whether or not that person is also a distributor as
60 defined in this section.

61 (18) "Sale" means the transfer of title or possession for valuable consideration
62 regardless 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
81 selling 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
105 Administration, shall be used to determine the amount of sugars per 12 ounces of sugary drink
106 by referencing the “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
112 tax 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
114 commonwealth to a consumer, on which the tax imposed by this section has not been paid by a
115 distributor, is liable 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
117 apply to 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
134 and American Indian Tribal Governments;

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

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

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

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

146 (6) Coffee or tea without added sugars;

147 (7) Infant formula;

148 (8) Beverages for medical use;

149 (9) Water without added sugars.;

150 (10) Unsweetened drinks to which a purchaser can add, or can request that a seller add,
151 sugar or a sweetener at the point of sale.

152 Section 6. Unpaid Taxes and Debt.

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

156 Section 7. Records of commissioner.

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

162 Section 8. Exercise of Powers and Duties.

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

166 Section 9. Rules and Regulations.

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

170 Section 10. Grant of Local Authority

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

174 Section 11. Severability.

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

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

183 Section 2J. COMMONWEALTH HEALTH PROMOTION FUND

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

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

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

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

198 (i.) Universal free school meals which shall be made available to all students at no charge
199 regardless of household income and consistent with waivers granted pursuant to the Families
200 First Coronavirus Response Act, Public Law 116-127 and any extensions thereto

201 (ii) implementation of providing healthy meals to kids in headstart and other high need
202 early education settings or to transfer funding into the Early Education Trust Fund.

203 Section 2K. COMMONWEALTH HEALTH PROMOTION ADVISORY BOARD

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

208 The board shall consist of: the commissioner of public health or a designee, the
209 commissioner of the department of elementary and secondary education or a designee; the
210 commissioner of the department of early education and care, who shall serve as chairpersons; the
211 house and senate chairs of the joint committee on public health; the house and senate chairs of
212 the joint committee on education; and 16 persons to be appointed by the governor, 1 of whom
213 shall be a person with expertise in the field of public health economics; 1 of whom shall be a
214 person with expertise in public health research; 1 of whom shall be a person with expertise in the
215 field of health equity; 1 of whom shall be a person from a local board of health for a city or town
216 with a population greater than 50,000; 1 of whom shall be a person of a board of health for a city
217 or town with a population of fewer than 50,000; 1 of whom shall be a person from a consumer
218 health organization; 1 of whom shall be a person from a statewide public health organization; 1
219 of whom shall be a representative of the interest of businesses; 1 of whom shall be from an
220 hunger organization; 1 of whom shall be from a early care and education organization; 1 of
221 whom shall be a person from school food services; 1 of whom shall be a person from an early
222 education program; 1 of whom shall be a person with expertise of childhood development; 1 of
223 whom shall be a person with expertise of a child welfare; and at least 1 whom shall be from
224 critical stakeholders or community interests.

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

226 (1) The department of public health shall, under the advice and guidance of the
227 Commonwealth's Health Promotion Advisory Board, annually report on its strategy for
228 administration and allocation of the fund, including relevant evaluation criteria. The report shall
229 set forth the rationale for such strategy, including, but not limited to: (1) a list of the most
230 prevalent preventable health conditions in the commonwealth, including health disparities

231 experienced by populations based on race, ethnicity, gender, disability status, sexual orientation
232 or socio-economic status; (2) a list of the most costly preventable health conditions in the
233 commonwealth; (3) a list of evidence-based or promising community-based programs related to
234 the conditions identified in clauses. The report shall recommend specific areas of focus for
235 allocation of funds.

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