SENATE DOCKET, NO. 959 FILED ON: 1/18/2023

SENATE . . . . . No. 1861

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:	
Jason M. Lewis	*Fifth Middlesex*	
Michael J. Barrett	*Third Middlesex*	*2/1/2023*
Michael O. Moore	*Second Worcester*	*3/20/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*7/6/2023*

SENATE DOCKET, NO. 959 FILED ON: 1/18/2023

SENATE . . . . . No. 1861

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1861) of Jason M. Lewis and Michael J. Barrett for legislation to promote healthy alternatives to sugary drinks. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1914* 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:

SECTION 1. The Massachusetts General Laws, as appearing in the 2020 Official Edition, are hereby amended by inserting after chapter 64N the following new chapter:-

Chapter 64O. SUGARY DRINK TAX

Section 1. Definitions.

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

(1) "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize 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 Commonwealth'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

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

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

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

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

Section 3. Report of Sales and Tax Remittances.

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

Section 4. Records of Distributors

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

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

Section 5. Exemptions.

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

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

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

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

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

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

(6) Coffee or tea without added sugars;

(7) Infant formula;

(8) Beverages for medical use;

(9) Water without added sugars.;

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

Section 6. Unpaid Taxes and Debt.

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

Section 7. Records of commissioner.

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

Section 8. Exercise of Powers and Duties.

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

Section 9. Rules and Regulations.

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

Section 10. Grant of Local Authority

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

Section 11. 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 2020 Official Edition, are hereby amended by inserting after Section 2I of Chapter 111 the following new chapter:-

Section 2J. COMMONWEALTH HEALTH PROMOTION FUND

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

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

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

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

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

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

Section 2K. COMMONWEALTH HEALTH PROMOTION ADVISORY BOARD

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

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

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

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

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

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