

SENATE No.

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:

Jason M. Lewis

DISTRICT/ADDRESS:

Fifth Middlesex

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1861 OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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 2022 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 U.S.C. 360ee(b)(3)); this Act defines medical food as “a food which is
13 formulated to be consumed or administered enterally under the supervision of a physician and
14 which is intended for the specific dietary management of a disease or condition for which
15 distinctive nutritional requirements, based on recognized scientific principles, are established by
16 medical evaluation.” “Beverage for medical use” shall not include drinks commonly referred to
17 as “sports drinks” or any other common names that are derivations thereof.

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

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

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

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

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

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

29 (8) “Distributor” means any person, including manufacturers and wholesale dealers,
30 who receives, stores, manufactures, bottles and/or distributes bottled sugary drinks, syrups or

31 powders, for sale to retailers doing business in the commonwealth, whether or not that person
32 also sells such products to consumers.

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

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

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

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

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

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

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

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

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

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

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

67 (20) "Sugary drink" means any nonalcoholic beverage, carbonated or noncarbonated,
68 which is intended for human consumption and contains any added sugars. As used in this
69 definition, "nonalcoholic beverage" means any beverage that contains less than one-half of one
70 percent alcohol per volume.

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

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

78 Section 2. Tax imposed.

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

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

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

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

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

87 \$0.02 per ounce.

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

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

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

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

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

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

106 (4) The tax amounts set forth in this section shall be adjusted annually by the
107 commissioner in proportion with the Consumer Price Index: All Urban Consumers for All Items
108 for the Northeast Region Statistical Area as reported by the United States Bureau of Labor
109 Statistics or any successor to that index.

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

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

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

117 Section 3. Report of Sales and Tax Remittances.

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

125 Section 4. Records of Distributors

126 Every distributor, and every retailer subject to this chapter, shall maintain for not less
127 than 2 years accurate records, showing all transactions that gave rise, or may have given rise, to
128 tax liability under this chapter. Such records are subject to inspection by the commissioner at all
129 reasonable times during normal business hours.

130 Section 5. Exemptions.

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

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

134 (2) Bottled sugary drinks, syrups, and powders sold by a distributor to another
135 distributor that holds a permit issued pursuant to this chapter if the sales invoice clearly indicates
136 that the sale is exempt. If the sale is to a person who is both a distributor and a retailer, the sale
137 shall also be tax exempt and the tax shall be paid when the purchasing distributor or retailer
138 resells the product to a retailer or a consumer. This exemption does not apply to any other sale to
139 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
142 added 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 2. Chapter 111 of the General Laws, as so appearing, is hereby amended by
174 inserting after Section 2J the following new sections:-

175 Section 2K. COMMONWEALTH HEALTH PROMOTION FUND

176 There shall be established and set up on the books of the commonwealth a separate fund
177 to be known as the Commonwealth's Health Promotion Fund. The fund shall consist of revenues
178 from the commonwealth generated by the tax imposed by Chapter 64O, section 2. The
179 department of public health shall administer the fund. The commissioner, in consultation with
180 the Commonwealth's Health Promotion Advisory Board established under section 2L, shall
181 make expenditures from the fund consistent with subsections (3 (i, ii, iii, iv and v)) provided that
182 not more than 10 per cent of the amounts held in the fund in any one year shall be used by the
183 department for the combined cost of the program administration, technical assistance or program
184 evaluation.

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

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

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

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

195 Section 2L. COMMONWEALTH HEALTH PROMOTION ADVISORY BOARD

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

200 The board shall consist of: the commissioner of public health or a designee, the
201 commissioner of the department of elementary and secondary education or a designee; the
202 commissioner of the department of early education and care, who shall serve as chairpersons; the
203 house and senate chairs of the joint committee on public health; the house and senate chairs of
204 the joint committee on education; and 16 persons to be appointed by the governor, 1 of whom
205 shall be a person with expertise in the field of public health economics; 1 of whom shall be a
206 person with expertise in public health research; 1 of whom shall be a person with expertise in the
207 field of health equity; 1 of whom shall be a person from a local board of health for a city or town
208 with a population greater than 50,000; 1 of whom shall be a person of a board of health for a city
209 or town with a population of fewer than 50,000; 1 of whom shall be a person from a consumer
210 health organization; 1 of whom shall be a person from a statewide public health organization; 1
211 of whom shall be a representative of the interest of businesses; 1 of whom shall be from an
212 hunger organization; 1 of whom shall be from a early care and education organization; 1 of
213 whom shall be a person from school food services; 1 of whom shall be a person from an early
214 education program; 1 of whom shall be a person with expertise of childhood development; 1 of

215 whom shall be a person with expertise of a child welfare; and at least 1 whom shall be from
216 critical stakeholders or community interests.

217 Section 2M. Evaluation of the Commonwealth's Health Promotion Fund

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

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