



Sen. William Delgado

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1 AMENDMENT TO SENATE BILL 396

2 AMENDMENT NO. _____. Amend Senate Bill 396 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Sugar-Sweetened Beverages, Syrups, and Powder Tax Act.

6 Section 5. Findings. The General Assembly finds that over
7 the past 30 years, the obesity rate in the United States has
8 substantially increased. The prevalence of adult obesity has
9 more than doubled during that time. According to statistics
10 compiled by the Centers for Disease Control, nearly 27% of
11 Illinois' adult residents in 2008 were considered obese (having
12 a body mass index of 30 and above) and the rate was even higher
13 among African American (36.4%) and Hispanic (30.7%) residents.
14 The General Assembly further finds that, for children, the
15 increase in obesity has been even more dramatic, with the
16 obesity rate among children ages 6-11 more than quadrupling

1 over the last 4 decades. The State of Illinois is not immune to
2 the problem. 21% of Illinois children (age 0-17 years) are
3 obese, the fourth worst rate in the nation.

4 The General Assembly further finds that obese children are
5 at least twice as likely as non-obese children to become obese
6 adults. Research indicates that the likelihood of an obese
7 child becoming an obese adult increases with age; adolescents
8 who are obese have a greater likelihood of being obese in
9 adulthood, as compared to younger children.

10 The General Assembly further finds that the obesity
11 epidemic has led to a dramatic increase in obesity-related
12 health conditions, such as type 2 diabetes, asthma, and heart
13 disease. These health conditions cost each of the states
14 billions of dollars in health care costs and lost productivity.
15 Obesity and weight-related illness accounts for \$147 billion in
16 health care costs nationally, or 9% of all medical spending per
17 year. Obesity-related annual medical expenditures in the State
18 of Illinois are estimated at \$3.4 billion in 2003 dollars.
19 Almost 60% of these costs are paid by public funds through
20 Medicare and Medicaid.

21 The General Assembly further finds that numerous studies
22 strongly support a link between obesity and consumption of
23 sweetened beverages such as soft drinks, energy drinks, sweet
24 teas and sports drinks. A study of a 5-year period between 1999
25 and 2004 showed that children and adolescents consumed 10-15%
26 of their daily caloric intake from sweetened beverages, which

1 offer little or no nutritional value and massive quantities of
2 added sugars. For example, a 12-ounce can of soda contains the
3 equivalent of approximately 10 teaspoons of sugar; the U.S.
4 Department of Agriculture recommends that a person eating a
5 2,200-calorie diet should eat no more than 12 teaspoons of
6 refined sugar in a day.

7 It is the intent of the General Assembly, by adopting this
8 Act and creating the Illinois Health Promotion Fund, to
9 diminish the human and economic costs of obesity in the State
10 of Illinois. This Act is intended to discourage excessive
11 consumption of sugar-sweetened beverages by increasing the
12 price of these products and by creating a dedicated revenue
13 source for programs designed to prevent and treat obesity and
14 reduce the burden of related health conditions.

15 Section 10. Legislative intent. It is the intent of the
16 General Assembly, by adopting this Act and creating the
17 Illinois Health Promotion Fund, to diminish the human and
18 economic costs of obesity in the State of Illinois. This Act is
19 intended to discourage excessive consumption of
20 sugar-sweetened beverages and to create a dedicated revenue
21 source for programs designed to prevent and treat childhood
22 obesity and health conditions which result from it.

23 Section 15. Definitions. For purposes of this Act:

24 "Bottle" means any closed or sealed container regardless of

1 size or shape, including, without limitation, those made of
2 glass, metal, paper, or plastic, or any other material or
3 combination of materials.

4 "Bottled sugar-sweetened beverage" means any
5 sugar-sweetened beverage contained in a bottle that is ready
6 for consumption without further processing such as, without
7 limitation, dilution or carbonation.

8 "Caloric sweetener" means any caloric substance suitable
9 for human consumption that humans perceive as sweet and
10 includes, without limitation, sucrose, fructose, glucose, or
11 other sugars. "Caloric sweetener" excludes non-caloric
12 sweeteners. For purposes of this definition, "caloric" means a
13 substance which adds calories to the diet of a person who
14 consumes that substance.

15 "Consumer" means a person who purchases a sugar-sweetened
16 beverage for consumption and not for sale to another.

17 "Department" means the Department of Revenue.

18 "Distributor" means any person, including manufacturers
19 and wholesale dealers, who receives, stores, manufactures,
20 bottles, or distributes bottled sugar-sweetened beverages,
21 syrup, or powder, for sale to retailers doing business in the
22 State, whether or not that person also sells those products to
23 consumers.

24 "Fund" means the Illinois Health Promotion Fund
25 established pursuant to Section 40.

26 "Non-caloric sweetener" means any non-caloric substance

1 suitable for human consumption that humans perceive as sweet
2 and includes, without limitation, aspartame, saccharin,
3 stevia, and sucralose. "Non-caloric sweetener" excludes
4 caloric sweeteners. For purposes of this definition,
5 "non-caloric" means a substance that contains fewer than 5
6 calories per serving.

7 "Person" means any natural person, partnership,
8 cooperative association, limited liability company,
9 corporation, personal representative, receiver, trustee,
10 assignee, or any other legal entity.

11 "Place of business" means any place where sugar-sweetened
12 beverages, syrups, or powder are manufactured or received for
13 sale in the State.

14 "Powder" means any solid mixture of ingredients used in
15 making, mixing, or compounding sugar-sweetened beverages by
16 mixing the powder with any one or more other ingredients,
17 including without limitation water, ice, syrup, simple syrup,
18 fruits, vegetables, fruit juice, vegetable juice, carbonation,
19 or other gas.

20 "Retailer" means any person who sells or otherwise
21 dispenses in the State a sugar-sweetened beverage to a consumer
22 whether or not that person is also a distributor as defined in
23 this Section.

24 "Sale" means the transfer of title or possession for
25 valuable consideration regardless of the manner by which the
26 transfer is completed.

1 "State" means the State of Illinois.

2 "Sugar-sweetened beverage" means any nonalcoholic
3 beverage, carbonated or noncarbonated, which is intended for
4 human consumption and contains any added caloric sweetener. As
5 used in this definition, "nonalcoholic beverage" means any
6 beverage that contains less than one-half of 1% alcohol per
7 volume. The term "sugar-sweetened beverage" does not include:

8 (1) beverages sweetened solely with non-caloric
9 sweeteners;

10 (2) beverages consisting of 100% natural fruit or
11 vegetable juice with no added caloric sweetener; for
12 purposes of this paragraph, "natural fruit juice" and
13 "natural vegetable juice" mean the original liquid
14 resulting from the pressing of fruits or vegetables, or the
15 liquid resulting from the dilution of dehydrated natural
16 fruit juice or natural vegetable juice;

17 (3) beverages in which milk is the primary ingredient
18 or the first listed ingredient on the label of the
19 beverage; for purposes of this Act, "milk" means natural
20 liquid milk regardless of animal or plant source or
21 butterfat content; natural milk concentrate, whether or
22 not reconstituted, regardless of animal or plant source or
23 butterfat content; or dehydrated natural milk, whether or
24 not reconstituted and regardless of animal or plant source
25 or butterfat content;

26 (4) coffee or tea without added caloric sweetener;

1 (5) infant formula;

2 (6) medically necessary foods; and

3 (7) water to which neither carbonation nor any other
4 substance has been added, except for minerals and
5 non-caloric flavoring agents.

6 "Syrup" means a liquid mixture of ingredients used in
7 making, mixing, or compounding sugar-sweetened beverages using
8 one or more other ingredients including, without limitation,
9 water, ice, a powder, simple syrup, fruits, vegetables, fruit
10 juice, vegetable juice, carbonation, or other gas.

11 Section 20. Permit required.

12 (a) Every distributor doing business in the State shall
13 file with the Department an application for a permit to engage
14 in the business of receiving, storing, manufacturing,
15 bottling, or distributing bottled sugar-sweetened beverages,
16 syrup, or powder, for each place of business owned and operated
17 by the distributor before the later of (i) the effective date
18 of this Act or (ii) the distributor's first acts which
19 constitute the doing of business in the State. An application
20 for a permit shall be filed on forms to be furnished by the
21 Department for that purpose. An application must be subscribed
22 and sworn to by a person with legal authority to bind the
23 business. The application shall identify the owners of the
24 applicant, the applicant's mailing address, the place of
25 business to which the permit shall apply, and the nature of the

1 business in which engaged, and any other information the
2 Department may require for the enforcement of this Act.

3 (b) Upon receipt of an application and any permit fee
4 hereafter provided for, the Department may issue to the
5 applicant, for the place of business designated, a
6 non-assignable permit, authorizing the sale of sugar-sweetened
7 beverages, syrups, and powder in the State. No distributor
8 shall sell any sugar-sweetened beverage, syrup, or powder
9 without first obtaining a permit to do so under this Act.
10 Permits issued pursuant to this Section shall expire on January
11 31 of each year and may be renewed annually.

12 (c) A permit may not be transferred from one person to
13 another, and a permit shall at all times be prominently
14 displayed in a distributor's place of business. The Department
15 may refuse to issue a permit to any person previously convicted
16 of violations of this Act under such procedures as the
17 Department may establish by rule.

18 Section 25. Tax imposed.

19 (a) There is hereby imposed an excise tax on every
20 distributor for the privilege of selling the products governed
21 by this Act in the State, calculated as follows.

22 (1) \$1.28 per gallon/\$0.01 per ounce of bottled
23 sugar-sweetened beverages sold or offered for sale to a
24 retailer for sale in the State to a consumer.

25 (2) The tax on syrup and powder sold or offered for

1 sale to a retailer for sale in the State to a consumer,
2 either as syrup or powder or as a sugar-sweetened beverage
3 derived from that syrup or powder, is equal to \$1.28 per
4 gallon/\$0.01 per ounce for each gallon or ounce of
5 sugar-sweetened beverage produced from that syrup or
6 powder. For purposes of calculating the tax, the volume of
7 sugar-sweetened beverage produced from syrup or powder
8 shall be the larger of (i) the largest volume resulting
9 from use of the syrup or powder according to any
10 manufacturer's instructions or (ii) the volume actually
11 produced by the retailer, as reasonably determined by the
12 Department.

13 (3) The tax amounts set forth in this Section shall be
14 adjusted annually by the Department in proportion with the
15 Consumer Price Index for All Urban Consumers for All Items
16 for the Midwest Statistical Area, as reported by the United
17 States Bureau of Labor Statistics or any successor to that
18 index.

19 (b) A retailer that sells bottled sugar-sweetened
20 beverages, syrup, or powder in the State to a consumer, on
21 which the tax imposed by this Section has not been paid by a
22 distributor, is liable for the tax imposed in subsection (a) at
23 the time of sale to a consumer.

24 (c) The tax imposed by this Act is in addition to all other
25 occupation or privilege taxes imposed by the State of Illinois,
26 by any political subdivision thereof, or by any municipal

1 corporation.

2 Section 30. Report of sales and tax remittances.

3 (a) Any distributor or retailer liable for the tax imposed
4 by this Act shall, on or before the last day of March, June,
5 October, and December of each year, return to the Department
6 under oath of a person with legal authority to bind the
7 distributor or retailer, a statement containing its name and
8 place of business, the quantity of sugar-sweetened beverages,
9 syrup, and powder subject to the excise tax imposed by this Act
10 sold or offered for sale in the preceding calendar quarter, and
11 any other information required by the Department, along with
12 the tax due.

13 (b) The State Treasurer shall credit the proceeds of the
14 tax to the Illinois Health Promotion Fund.

15 Section 35. Records of distributors. Every distributor and
16 every retailer subject to this Act shall maintain for not less
17 than 2 years accurate records, showing all transactions that
18 gave rise, or may have given rise, to tax liability under this
19 Act. Such records are subject to inspection by the Department
20 at all reasonable times during normal business hours.

21 Section 40. Establishment of Illinois Health Promotion
22 Fund. There is hereby created a trust fund in the State
23 treasury called the Illinois Health Promotion Fund. Fifty

1 percent of moneys collected pursuant to the taxes imposed by
2 this Act, and all interest on those moneys, shall be paid into
3 the Illinois Health Promotion Fund. All costs to implement this
4 Act shall be paid from the Illinois Health Promotion Fund.

5 Section 45. Expenditure of Illinois Health Promotion Fund.

6 (a) All moneys in the Illinois Health Promotion Fund, after
7 tax administration costs have been deducted, shall be
8 appropriated and allocated as follows:

9 (1) Twenty percent to the Illinois Department of Public
10 Health to coordinate grants to State-certified public
11 health departments to improve public health
12 infrastructure. Funded projects will improve workforce and
13 systems development, chronic disease surveillance and
14 monitoring systems, chronic disease program evaluation,
15 and regional coordination that includes networking,
16 coordination, standardization, and cross-jurisdictional
17 cooperation for the efficient delivery of public health
18 services (e.g., resource sharing) to ensure that public
19 health goals are effectively and efficiently met.

20 (2) Thirty percent for community-based childhood
21 obesity prevention programs. This funding shall support
22 programs that use educational, environmental, policy, and
23 other public health approaches that achieve the following
24 goals: eliminate racial, ethnic, and socioeconomic
25 disparities in childhood obesity rates; improve access to

1 and consumption of healthy, safe, and affordable foods;
2 reduce access to and consumption of calorie-dense,
3 nutrient-poor foods; encourage physical activity; decrease
4 sedentary behavior; and raise awareness about the
5 importance of nutrition and physical activity to childhood
6 obesity prevention. The Illinois Director of Public Health
7 shall be responsible for the distribution of these funds to
8 community-based organizations and to State-certified
9 public health departments, with priority given to
10 counties, municipalities, and other geographic
11 jurisdictions that have childhood obesity prevention
12 coalitions to build broad-based support for childhood
13 obesity prevention.

14 (3) Thirty percent to elementary and secondary schools
15 for educational, environmental, policy, and other public
16 health approaches that promote nutrition and physical
17 activity. The approaches funded pursuant to this
18 subsection can include improving or building school
19 recreational facilities that are used for recess and
20 physical education; providing continuing education
21 training for physical education teachers; hiring qualified
22 physical education teachers; implementing policies that
23 encourage walking and biking to and from school (i.e.
24 school siting, school travel plans); improving the quality
25 and nutrition of school breakfasts, lunches, and snacks;
26 ensuring free, clean drinking water access throughout the

1 school day; and incorporating practical nutrition
2 education into the curriculum. The State Board of Education
3 is responsible for the allocation and distribution of these
4 funds.

5 (4) Ten percent for chronic disease prevention and
6 treatment programs. Funding shall be focused on
7 prevention, treatment, and community-based services to
8 expand clinical disease prevention and management care.
9 Funding shall support medicaid reimbursement for pediatric
10 specialty care services to improve access for children to
11 medical services. The Director of Public Health shall be
12 responsible for identifying activities and allocating
13 these funds.

14 (5) Ten percent to fund oral health treatments and
15 services to underserved populations. The funds shall be
16 used for the development of new clinics in high need areas
17 throughout Illinois, medicaid reimbursements for direct
18 services with a focus on preventative dental services such
19 as semi-annual office visits and teeth cleaning, and
20 salaries for dentists. The Director of Public Health shall
21 be responsible for coordinate grants to distribute funds.

22 (b) All moneys in the Children's Health Promotion Fund
23 shall be expended only for the purposes expressed in this Act,
24 and shall be used only to supplement existing levels of service
25 and not to supplant current federal, state, or local funding
26 for existing levels of service.

1 (c) The Illinois Director of Public Health and the Illinois
2 State Board of Education are hereby empowered to make such
3 rules and regulations, and provide such procedural measures, as
4 shall bring into effect the purposes of this Section. The rules
5 and regulations may provide for specific programs to be funded
6 consistent with the allocation of funds set forth above.

7 Section 50. Exemptions. The following are exempt from the
8 tax imposed by this Act:

9 (1) Bottled sugar-sweetened beverages, syrups, and
10 powder sold to the United States Government and American
11 Indian Tribal Governments.

12 (2) Bottled sugar-sweetened beverages, syrups, and
13 powder sold by a distributor or a retailer expressly for
14 resale or consumption outside the State.

15 (3) Bottled sugar-sweetened beverages, syrups, and
16 powder sold by a distributor to another distributor that
17 holds a permit issued pursuant to Section 20 of this Act,
18 if the sales invoice clearly indicates that the sale is
19 exempt. If the sale is to a person who is both a
20 distributor and a retailer, the sale shall also be tax
21 exempt and the tax shall be paid when the purchasing
22 distributor-retailer resells the product to a retailer or a
23 consumer. This exemption does not apply to any other sale
24 to a retailer.

1 Section 55. Penalties.

2 (a) Any person subject to the provisions of this Act who
3 fails to pay the entire amount of tax imposed by this Act by
4 the date that payment is due, fails to submit a report or
5 maintain records required by this Act, does business in the
6 State without first obtaining a permit as required by this Act,
7 or violates any other provision of this Act or rules and
8 regulations promulgated by the Department for the enforcement
9 of this Act, shall be guilty of a misdemeanor and shall also be
10 liable for the penalties set forth and incorporated by
11 reference into this Section.

12 (b) Incorporation by reference. All of the provisions of
13 Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 6, 6a,
14 6b, 6c, 8, 9, 10, 11, 11a, and 12 of the Retailers' Occupation
15 Tax Act, and all applicable provisions of the Uniform Penalty
16 and Interest Act that are not inconsistent with this Act, apply
17 to distributors of sugar-sweetened beverages to the same extent
18 as if those provisions were included in this Act. References in
19 the incorporated Sections of the Retailers' Occupation Tax Act
20 to retailers, to sellers, or to persons engaged in the business
21 of selling tangible personal property mean distributors,
22 retailers, or both when used in this Act. References in the
23 incorporated Sections to sales of tangible personal property
24 mean sales of sugar-sweetened beverages, syrups, or powder when
25 used in this Act.

1 Section 60. Unpaid taxes a debt. All taxes and penalties
2 imposed under the provisions of this Act remaining due and
3 unpaid shall constitute a debt to the State, which may be
4 collected from the person owing the same by suit or otherwise.

5 Section 65. Records of Department. At the end of each
6 month, the State Auditor General shall check the books and
7 records of the Department and its accounts with any bank or
8 banks, and shall verify the amounts collected pursuant to this
9 Act and paid into the Children's Health Promotion Fund. Any
10 duty herein required of the State Auditor General may be
11 performed by any duly trained clerk in his office, designated
12 by the State Auditor General for that purpose.

13 Section 70. Exercise of powers and duties. Whenever in this
14 Act any reference is made to any power or duty of the
15 Department, the reference is construed to mean that the power
16 or duty shall be exercised by the Department, under the
17 supervision and direction of the Director of Revenue.

18 Section 75. Rules and regulations. The Department is hereby
19 empowered to adopt rules, and provide such procedural measures,
20 in cooperation with the State Auditor General, as may be
21 reasonably necessary to accomplish the purposes of this Act.

22 Section 80. Severability. If any provision of this Act, any

1 rule or regulation made under this Act, or the application of
2 this Act to any person or circumstance is held invalid by any
3 court of competent jurisdiction, the remainder of the Act,
4 rule, or regulation, and the application of the provision to
5 other persons or circumstances shall not be affected. The
6 invalidity of any Section or Sections or parts of any Section
7 of this Act shall not affect the validity of the remainder of
8 the Act.

9 Section 100. The State Finance Act is amended by adding
10 Section 5.786 as follows:

11 (30 ILCS 105/5.786 new)

12 Sec. 5.786. The Illinois Health Promotion Fund.

13 Section 999. Effective date. This Act takes effect January
14 1, 2012."