

Introduced by Senator MonningFebruary 22, 2013

An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 622, as introduced, Monning. Taxation: sweetened beverage tax: Children's Health Promotion Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, on and after July 1, 2013, impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, at a rate of \$0.01 per fluid ounce and for the privilege of distributing concentrate in this state, either as concentrate or as sweetened beverages derived from that concentrate, at the rate of \$0.01 per fluid ounce of sweetened beverage to be produced from concentrate. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. This bill would exempt from the tax, among other things, the distribution in this state of bottled sweetened beverages or concentrate made by a distributor to another distributor registered with the board and supported by an exemption certificate that consists of a statement signed under penalty of perjury.

By expanding the definition of the existing crime of perjury and by expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill imposes a state-mandated local program.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the Children's Health Promotion Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Public Health and Superintendent of Public Instruction, as specified, for the purposes of statewide childhood obesity prevention activities and programs. This bill would also authorize the Director of the State Department of Public Health and the Superintendent of Public Instruction to make rules and regulations, and provide procedural measures, to bring into effect those purposes.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages, childhood obesity, and dental disease.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The prevalence of obesity in the United States has increased
4 dramatically over the past 30 years. From the 1960s to the late
5 1970s, the prevalence was relatively constant, with about 15
6 percent of the population classified as obese. After the 1970s, these
7 rates began to climb. By 2006, 23.3 percent of Americans were
8 considered obese. In California, obesity rates have increased even
9 more, rising from 8.9 percent in 1984 to 25.5 percent in 2010.
10 Although no group has escaped the epidemic, ethnic minorities
11 and the poor are disproportionately affected.

1 (b) The rate of children who are overweight has also increased
2 dramatically in recent decades. After being relatively constant
3 from the 1960s to the 1970s, the prevalence of overweight children
4 has more than quadrupled among children between 6 and 11 years
5 of age and nearly tripled among those between 12 and 19 years of
6 age.

7 (c) The obesity epidemic is of particular concern because obesity
8 increases the risk of diabetes, heart disease, certain types of cancer,
9 arthritis, asthma, and breathing problems. Depending on their level
10 of obesity, from 60 percent to over 80 percent of obese adults have
11 type 2 diabetes, high blood cholesterol, high blood pressure, or
12 other related conditions. It has been reported that up to 60 percent
13 of obese children 5 to 10 years of age have early signs of heart
14 disease.

15 (d) Type 2 diabetes, previously only seen among adults, is now
16 increasing among children. If the current obesity trends are not
17 reversed, it is predicted that one in three children and nearly
18 one-half of Latino and African American children born in the year
19 2000 will develop type 2 diabetes in their lifetime. Research shows
20 that overweight children have a much greater chance of being
21 obese as adults, with all the health risks that entails.

22 (e) Overweight and obesity account for \$147 billion in health
23 care costs nationally, or 9 percent of all medical spending – with
24 half these costs paid publicly through the Medicare and Medicaid
25 programs.

26 (f) In 2006, overweight and obesity- related costs in California
27 were estimated at almost \$21 billion.

28 (g) There is overwhelming evidence of the link between obesity
29 and the consumption of sweetened beverages, such as soft drinks,
30 energy drinks, sweet teas, and sports drinks. California adults who
31 drink a soda or more per day are 27 percent more likely to be
32 overweight or obese, regardless of income or ethnicity.

33 (h) According to nutritional experts, sweetened beverages, such
34 as soft drinks, energy drinks, sweet teas, and sport drinks, offer
35 little or no nutritional value, but massive quantities of added sugars.
36 For example, a 20-ounce bottle of soda contains the equivalent of
37 approximately 17 teaspoons of sugar. Yet, the American Heart
38 Association recommends that Americans consume no more than
39 five to nine teaspoons of sugar per day.

1 (i) Research shows that almost one-half of the extra calories
2 Americans have been consuming since the 1970s could come from
3 soda, with the average American drinking nearly 50 gallons of
4 sweetened beverages a year, the equivalent of 39 pounds of extra
5 sugar every year.

6 (j) Americans are drinking more sweetened beverages than ever
7 before. From 1977 to 2002, Americans doubled the amount of
8 sweetened beverages they consumed. Currently, children and adult
9 Americans consume 172 and 175 calories respectively from
10 sweetened beverages a day. Children and adolescents now consume
11 10 to 15 percent of their daily caloric intake from sweetened
12 beverages.

13 (k) Research shows that 41 percent of California children 2 to
14 11 years of age and 62 percent of California teens 12 to 17 years
15 of age drink soda daily, and for every additional serving of
16 sweetened beverage that a child consumes a day, the likelihood of
17 the child becoming obese increases by 60 percent.

18 (l) Dental caries (tooth decay) is the most common chronic
19 childhood disease, experienced by more than two-thirds of
20 California's children. Children who frequently or excessively
21 consume beverages high in sugar are at increased risk for dental
22 caries. Untreated dental caries can lead to pain, infection, tooth
23 loss, and in severe cases, even death. It can slow normal growth
24 and development by restricting nutritional intake. Children who
25 are missing teeth may have chewing problems that limit their food
26 choices and result in nutritionally inadequate diets.

27 (m) It is the intent of the Legislature, by adopting the Sweetened
28 Beverage Tax Law and creating the Children's Health Promotion
29 Fund, to diminish the human and economic costs of obesity and
30 dental disease in California. This act is intended to discourage
31 excessive consumption of sweetened beverages by increasing the
32 price of these products and by creating a dedicated revenue source
33 for health programs designed to prevent and treat childhood obesity
34 and dental disease and reduce the burden of attendant health
35 conditions.

36 SEC. 2. Part 14.5 (commencing with Section 32600) is added
37 to Division 2 of the Revenue and Taxation Code, to read:

1 PART 14.5. SWEETENED BEVERAGE TAX LAW

2
3 32600. This part shall be known and may be cited as the
4 Sweetened Beverage Tax Law.

5 32601. For purposes of this part:

6 (a) “Beverage container” means any closed or sealed container
7 regardless of size or shape, including, without limitation, those
8 made of glass, metal, paper, plastic, or any other material or
9 combination of materials.

10 (b) “Bottled sweetened beverage” means a sweetened beverage
11 contained in a beverage container.

12 (c) “Beverage dispensing machine” means a device that mixes
13 concentrate with any one or more other ingredients and dispenses
14 the resulting mixture into an open container as a ready-to-drink
15 beverage.

16 (d) “Caloric sweetener” means any caloric substance suitable
17 for human consumption that humans perceive as sweet and
18 includes, without limitation, sucrose, fructose, including high
19 fructose corn sweetener, glucose, other sugars, and fruit juice
20 concentrates. “Caloric” means a substance that adds calories to
21 the diet of a person who consumes that substance.

22 (e) “Concentrate” means a syrup, powder, or base product that
23 is used for mixing, compounding, or making sweetened beverages
24 in a beverage dispensing machine. For purposes of this part,
25 “concentrate” does not include any of the following:

26 (1) Any product that is solely used in preparing coffee or tea.

27 (2) Any product for consumption by infants and which is
28 commonly referred to as “infant formula.”

29 (3) Any product for use for weight reduction.

30 (4) Any product containing milk or milk products or plant
31 protein sources.

32 (5) Any frozen concentrate or freeze-dried concentrate to which
33 only water is added to produce a sweetened beverage containing
34 more than 10 percent natural fruit juice or more than 10 percent
35 natural vegetable juice.

36 (6) Any product that is sold and is intended to be used for the
37 purpose of an individual consumer mixing a sweetened beverage.

38 (7) Medical food.

39 (8) Any product to which no caloric sweeteners have been
40 added.

- 1 (f) “Consumer” means a person who purchases a bottled
2 sweetened beverage or concentrate for a purpose other than resale
3 in the ordinary course of business.
- 4 (g) “Distribution” includes:
- 5 (1) The sale of bottled sweetened beverages or concentrate to
6 a retailer.
- 7 (2) The receipt of untaxed bottled sweetened beverages or
8 concentrate in this state from an unregistered out-of-state distributor
9 by a retailer.
- 10 (h) “Distributor” means any person who makes a distribution
11 of bottled sweetened beverages, sweetened beverages, or
12 concentrate in the state, whether or not that person also sells these
13 products to consumers.
- 14 (i) “Medical food” means medical food as defined in Section
15 109971 of the Health and Safety Code.
- 16 (j) “Milk” means natural liquid milk, regardless of animal source
17 or butterfat content, natural milk concentrate, whether or not
18 reconstituted, regardless of animal source, plant source, or butterfat
19 content, or dehydrated natural milk, whether or not reconstituted
20 and regardless of animal source or butterfat content.
- 21 (k) “Natural fruit juice” means the original liquid resulting from
22 the pressing of fruit, the liquid resulting from the reconstitution of
23 natural fruit juice concentrate, or the liquid resulting from the
24 restoration of water to dehydrated natural fruit juice.
- 25 (l) “Natural vegetable juice” means the original liquid resulting
26 from the pressing of vegetables, the liquid resulting from the
27 reconstitution of natural vegetable juice concentrate, or the liquid
28 resulting from the restoration of water to dehydrated natural
29 vegetable juice.
- 30 (m) “Nonalcoholic beverage” means any beverage not subject
31 to tax under Part 14 (commencing with Section 32001).
- 32 (n) “Person” means an individual, trust, firm, joint stock
33 company, business concern, business trust, receiver, trustee,
34 syndicate, social club, fraternal organization, estate, corporation,
35 including, but not limited to, a government corporation, partnership,
36 limited liability company, and association or any other group or
37 combination acting as a unit. “Person” also includes any city,
38 county, city and county, district, commission, the state, or any
39 department, agency, or political subdivision thereof, any interstate

1 body, and the United States and its agencies and instrumentalities
2 to the extent permitted by law.

3 (o) “Powder” or “base product” means a solid mixture of
4 ingredients used in making, mixing, or compounding sweetened
5 beverages by mixing the powder or base product with any one or
6 more other ingredients, including, without limitation, water, ice,
7 syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice,
8 or carbonation or other gas.

9 (p) “Retail sale” means the sale of bottled sweetened beverages
10 or sweetened beverages to a consumer.

11 (q) “Retailer” means any person who sells in this state bottled
12 sweetened beverages or sweetened beverages to a consumer,
13 whether or not that person is also a distributor as defined in this
14 section.

15 (r) “Sale” means the transfer of title or possession for
16 consideration in any manner or by any means whatever.

17 (s) “Simple syrup” means a mixture of sugar and water.

18 (t) (1) “Sweetened beverage” means any sweetened
19 nonalcoholic beverage sold for human consumption that contains
20 any added caloric sweeteners, including, but not limited to, the
21 following: soda water, ginger ale, root beer, all beverages
22 commonly referred to as cola, lime, lemon, lemon-lime, and other
23 flavored beverages, including any fruit or vegetable beverage
24 containing 10 percent or less natural fruit juice or natural vegetable
25 juice, and all other drinks and beverages commonly referred to as
26 “soda,” “soda pop,” and “soft drinks.”

27 (2) “Sweetened beverage” does not include any of the following:

28 (A) Any product sold in liquid form for consumption by infants,
29 which is commonly referred to as “infant formula.”

30 (B) Any product sold in liquid form for use for weight reduction.

31 (C) Water, to which no caloric sweeteners have been added.

32 (D) Any product containing milk or milk products or plant
33 protein sources.

34 (E) Medical food.

35 (F) Coffee or tea.

36 (u) “Syrup” means the liquid mixture of ingredients used in
37 making, mixing, or compounding sweetened beverages using one
38 or more other ingredients including, without limitation, water, ice,
39 a powder, simple syrup, fruits, vegetables, fruit juice, vegetable
40 juice, or carbonation or other gas.

1 32602. There is hereby imposed an excise tax on every
2 distributor for the privilege of distributing bottled sweetened
3 beverages and concentrate in the state, calculated as follows:

4 (a) The tax on bottled sweetened beverages distributed in this
5 state shall be one cent (\$0.01) per fluid ounce.

6 (b) The tax on concentrate distributed in this state either as
7 concentrate or as a sweetened beverage derived from that
8 concentrate, shall be equal to one cent (\$0.01) per fluid ounce of
9 sweetened beverage produced from that concentrate. For purposes
10 of calculating the tax for concentrate, the volume of sweetened
11 beverage to be produced from concentrate shall be the largest
12 volume resulting from use of the concentrate according to any
13 manufacturer's instructions.

14 32603. Each distributor shall include the following information
15 on each receipt, invoice, or other form of accounting for the
16 distribution of bottled sweetened beverages or concentrate:

17 (a) The name and address of the distributor.

18 (b) The name and address of the purchaser.

19 (c) The date of sale and invoice number.

20 (d) The kind, quantity, size, and capacity of packages of bottled
21 sweetened beverages, sweetened beverages, or concentrate sold.

22 (e) The amount of excise taxes due to the board from the
23 distributor on the sale of the bottled sweetened beverages or
24 concentrate.

25 (f) Any other information as required by the board.

26 32604. There is exempt from the taxes imposed by this part
27 the distribution of bottled sweetened beverages or concentrate
28 distributed by a distributor to:

29 (a) A distributor registered with the board under this part when
30 supported by a properly completed exemption certificate.

31 (b) To a person when, pursuant to the contract of sale, the bottled
32 sweetened beverages or concentrates are required to be shipped
33 and are shipped to a point outside of this state by the distributor
34 by means of any of the following:

35 (1) Facilities operated by the distributor.

36 (2) Delivery by the distributor to a carrier, customs broker, or
37 forwarding agent, whether hired by the purchaser or not, for
38 shipment to the out-of-state point.

1 (c) To a person where the state is prohibited from taxing that
2 sale, use, or consumption under the Constitution or laws of the
3 United States or under the Constitution of this state.

4 32605. The exemption certificate to be provided by a distributor
5 to another distributor as required by subdivision (a) of Section
6 32604 shall consist of a statement that is signed under penalty of
7 perjury by a person with authority to bind the distributor. The
8 certificate shall be dated and include the distributor's name and
9 account number. A new certificate shall be given if any information
10 in the current certificate changes. The certificate may be included
11 as part of any business records normally used to document a sale
12 or distribution.

13 32606. A distributor who has paid a tax, either directly to the
14 state or to another distributor registered under this part, and makes
15 a subsequent distribution of bottled sweetened beverages or
16 concentrate may claim a credit on its return for the period in which
17 the subsequent sale or distribution occurs.

18 32607. The board shall administer and collect the tax imposed
19 by this part pursuant to the Fee Collection Procedures Law (Part
20 30 (commencing with Section 55001)). For purposes of this part,
21 the references in the Fee Collection Procedures Law to "fee" shall
22 include the tax imposed by this part and references to "feepayer"
23 shall include a person required to pay the tax imposed by this part.

24 32608. (a) The board may prescribe, adopt, and enforce
25 regulations relating to the administration and enforcement of this
26 part, including, but not limited to, collections, reporting, refunds,
27 and appeals.

28 (b) The board may prescribe, adopt, and enforce any emergency
29 regulations as necessary to implement this part. Any emergency
30 regulation prescribed, adopted, or enforced pursuant to this section
31 shall be adopted in accordance with Chapter 3.5 (commencing
32 with Section 11340) of Part 1 of Division 3 of Title 2 of the
33 Government Code, and, for purposes of that chapter, including
34 Section 11349.6 of the Government Code, the adoption of the
35 regulation is an emergency and shall be considered by the Office
36 of Administrative Law as necessary for the immediate preservation
37 of the public peace, health and safety, and general welfare.

38 32609. The taxes imposed by this part are due and payable to
39 the board quarterly on or before the last day of the month next
40 succeeding each quarterly period.

1 32610. (a) On or before the last day of the month following
2 each quarterly period of three months, a return for the preceding
3 quarterly period shall be filed using electronic media with the
4 board.

5 (b) The board may prescribe those forms and reporting
6 requirements as are necessary to implement the tax, including, but
7 not limited to, information regarding the total amount of bottled
8 sweetened beverages and concentrate sold and the amount of tax
9 due.

10 (c) Returns shall be authenticated in a form or pursuant to
11 methods as may be prescribed by the board.

12 32610.5. Every person required to pay the tax imposed under
13 this part shall register with the board. Every application for
14 registration shall be made upon a form prescribed by the board
15 and shall set forth the name under which the applicant transacts
16 or intends to transact business, the location of his or her place or
17 places of business, and such other information as the board may
18 require. An application for an account shall be authenticated in a
19 form or pursuant to methods as may be prescribed by the board.

20 32611. (a) There is hereby created a trust fund in the State
21 Treasury called the Children's Health Promotion Fund. The
22 Children's Health Promotion Fund shall consist of all taxes,
23 interest, penalties, and other amounts collected pursuant to this
24 part, less refunds and reimbursement to the board for expenses
25 incurred in the administration and collection of the tax.

26 (b) All moneys in the Children's Health Promotion Fund shall,
27 upon appropriation by the Legislature, be allocated for the purposes
28 of statewide childhood obesity prevention activities and programs
29 as follows:

30 (1) Twenty percent to the State Department of Public Health to
31 coordinate statewide childhood obesity prevention activities and
32 to fund state-level childhood obesity prevention and children's
33 dental programs. This funding shall support programs that use
34 educational, environmental, policy, and other public health
35 approaches that achieve the following goals: improve access to
36 and consumption of healthy, safe, and affordable foods and
37 beverages; reduce access to and consumption of calorie-dense,
38 nutrient-poor foods; encourage physical activity; decrease sedentary
39 behavior; and raise awareness about the importance of nutrition
40 and physical activity to childhood obesity prevention.

1 (2) Thirty-five percent for community-based childhood obesity
2 prevention programs. This funding shall support programs that
3 use educational, environmental, policy, and other public health
4 approaches that achieve the following goals: improve access to
5 and consumption of healthy, safe, and affordable foods and
6 beverages; reduce access to and consumption of calorie-dense,
7 nutrient-poor foods; encourage physical activity; decrease sedentary
8 behavior; and raise awareness about the importance of nutrition
9 and physical activity to childhood obesity prevention. The State
10 Department of Public Health shall be responsible for the
11 distribution of these funds to community-based organizations and
12 to local health departments, with priority given to counties that
13 have established childhood obesity prevention coalitions to build
14 political support for programs.

15 (3) Ten percent to evidence-based prevention, early recognition,
16 monitoring, and weight management intervention activities in the
17 medical setting. The State Department of Public Health shall be
18 responsible for identifying activities and allocating these funds.

19 (4) Thirty-five percent to elementary and secondary schools for
20 educational, environmental, policy and other public health
21 approaches that promote nutrition and physical activity. The
22 approaches funded pursuant to this paragraph can include
23 improving or building school recreational facilities that are used
24 for recess and physical education; providing continuing education
25 training for physical education teachers; hiring qualified physical
26 education teachers; implementing Safe Routes to Schools
27 programs; improving the quality and nutrition of school breakfasts,
28 lunches, and snacks; ensuring free, clean drinking water access
29 throughout the schoolday; and incorporating practical nutrition
30 education into the curriculum. The Superintendent of Public
31 Instruction is responsible for the allocation and distribution of
32 these funds.

33 (c) All moneys in the Children’s Health Promotion Fund shall
34 be expended only for the purposes expressed in this chapter, and
35 shall be used only to supplement existing levels of service and not
36 to supplant current federal, state, or local funding for existing levels
37 of service.

38 (d) The Director of the State Department of Public Health and
39 the Superintendent of Public Instruction are hereby authorized to
40 make such rules and regulations, and provide such procedural

1 measures, as shall bring into effect the purposes of this section.
2 The rules and regulations may provide for specific programs to be
3 funded consistent with the allocation of funds set forth above.

4 32612. This part shall become operative on July 1, 2013.

5 SEC. 3. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.