

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 505

H.P. 390

House of Representatives, February 5, 2003

**An Act To Promote Maine Farm and Dairy Products in Place of Soft
Drinks in Public Schools and To Create a Maine Residency Program
for New Dentists**

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Cornville.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 20-A MRSA §15612, sub-§15 is enacted to read:

6 15. Health promotion fund. School administrative units
8 that adopt policies that prohibit the advertising and sale of
10 soft drinks and candy on all school property and that make
12 available on a daily basis Maine dairy products and fresh
in-season farm products for sale and consumption as snack foods
and as a part of regular school meal programs may receive an
adjustment from the Health Promotion Fund as provided in Title
36, section 4855.

14 Sec. 2. 36 MRSA c. 721 is enacted to read:

16 CHAPTER 721

18 SOFT DRINK AND SYRUP TAX

20 §4851. Definitions

22 As used in this chapter, unless the context otherwise
24 indicates, the following terms have the following meanings.

26 1. Bottle. "Bottle" means any closed or sealed glass,
28 metal, paper or plastic container or any other type of container
regardless of the size or shape of the container.

30 2. Bottled soft drink. "Bottled soft drink" means any
32 ready-to-consume, nonalcoholic drink, whether carbonated or
noncarbonated, commonly referred to as a soft drink and contained
in a bottle.

34 3. Distributor, manufacturer or wholesale dealer.
36 "Distributor, manufacturer or wholesale dealer" means any person
38 who receives, stores, manufactures, bottles or sells bottled soft
40 drinks, syrup, simple syrup or powder or base products for
mixing, compounding or making soft drinks for sale to retailers,
other manufacturers, wholesale dealers or distributors for resale
purposes.

42 4. Milk. "Milk" means natural liquid milk regardless of
44 animal source or butterfat content; natural milk concentrate,
whether or not reconstituted, regardless of animal source or
46 butterfat content; or dehydrated natural milk, whether or not
reconstituted.

48 5. Natural fruit juice. "Natural fruit juice" means the
50 original liquid resulting from the pressing of fruit, the liquid
resulting from the reconstitution of fruit juice

2 concentrate or the liquid resulting from the restoration of water
3 to dehydrated fruit juice.

4 **6. Natural vegetable juice.** "Natural vegetable juice"
5 means the original liquid resulting from the pressing of
6 vegetables, the liquid resulting from the reconstitution of
7 vegetable juice concentrate or the liquid resulting from the
8 restoration of water to dehydrated vegetable juice.

10 **7. Nonalcoholic beverage.** "Nonalcoholic beverage" means
11 any beverage not subject to tax under Title 28-A, Part 4.

12 **8. Place of business.** "Place of business" means any place
13 where soft drinks, syrups, simple syrups or powder or base
14 products are manufactured or any place where bottled soft drinks,
15 syrup, simple syrup, powder or base product or any other item
16 taxed under this chapter is received.

18 **9. Powder or base product.** "Powder or base product" means
19 a solid mixture of basic ingredients used in making, mixing or
20 compounding soft drinks by mixing the powder or other base with
21 water, ice, syrup, simple syrup, fruits, vegetables, fruit juice,
22 vegetable juice or any other product suitable to make a soft
23 drink.

24 **10. Retailer.** "Retailer" means any person, other than a
25 manufacturer, distributor or wholesaler, who receives, stores,
26 mixes, compounds or manufactures any soft drink and sells or
27 otherwise dispenses the soft drink to the ultimate consumer.

28 **11. Sale.** "Sale" means the transfer of title or possession
29 for a valuable consideration of tangible personal property
30 regardless of the manner by which the transfer is accomplished.

31 **12. Simple syrup.** "Simple syrup" means a mixture of sugar
32 and water.

33 **13. Soft drink.** "Soft drink" means any nonalcoholic
34 beverage, whether naturally or artificially flavored, whether
35 carbonated or noncarbonated, sold for human consumption,
36 including, but not limited to, soda water, cola and other
37 flavored drinks, any fruit or vegetable drink containing 10% or
38 less of natural fruit juice or natural vegetable juice and all
39 other drinks and beverages commonly referred to as soft drinks,
40 but not including coffee or tea unless the coffee or tea is
41 bottled as a liquid for sale.

42 **14. Syrup.** "Syrup" means the liquid mixture of basic
43 ingredients used in making, mixing or compounding soft drinks by
44 mixing the syrup with water, simple syrup, ice, fruits,
45 and other ingredients.

2 vegetables, fruit juice, vegetable juice or any other product
3 suitable to make a soft drink.

4 **§4852. Tax rate**

6 1. Tax imposed. There is imposed a tax on every
7 distributor, manufacturer or wholesale dealer to be calculated as
8 follows:

10 A. Two dollars per gallon of syrup or simple syrup sold or
11 offered for sale;

12 B. Twenty-one cents per gallon of bottled soft drinks sold
13 or offered for sale; and

14 C. When a package or container of powder or base product is
15 sold or offered for sale in the State, the tax on the sale
16 of each package or container is equal to 21¢ for each gallon
17 of soft drink that may be produced from each package or
18 container by following the manufacturer's instructions.
19 This tax applies when the powder or base product is sold to
20 a retailer for sale to the ultimate consumer after the soft
21 drink is produced by the retailer.

22 2. Purchase from unlicensed seller. A retailer who
23 purchases bottled soft drinks, syrup, simple syrup or powder or
24 base product from an unlicensed distributor, manufacturer or
25 wholesale dealer is liable for the tax imposed in subsection 1.

26 **§4853. Exemptions**

27 The following are exempt from the tax imposed by section
28 4852:

29 1. Sales to Federal Government. Syrups, simple syrups,
30 powders or base products or soft drinks sold to the Federal
31 Government;

32 2. Products exported from State. Syrups, simple syrups,
33 powders or base products or soft drinks exported from the State
34 by a distributor, manufacturer or wholesale dealer;

35 3. Coffee or tea base. Any powder or base product used in
36 preparing coffee or tea;

37 4. Juice or vegetable concentrate. Any frozen,
38 freeze-dried or other concentrate to which only water is added to
39 produce a soft drink containing more than 10% natural fruit juice
40 or natural vegetable juice;

2 5. Fruit or vegetable juice. Any soft drink containing
more than 10% natural fruit juice or natural vegetable juice;

4 6. Sales to another distributor, manufacturer or wholesale
dealer. Syrups, simple syrups, powders or base products or soft
6 drinks sold by a distributor, manufacturer or wholesale dealer to
a distributor, manufacturer or wholesale dealer who holds a
8 license under section 4856 if the license number of the
distributor, manufacturer or wholesale dealer to whom the soft
10 drink is sold is clearly shown on the invoice for the sale that
is claimed to be exempt. This exemption does not apply to any
12 sale to a retailer;

14 7. Infant formula. Any product, whether sold in liquid or
powder form, that is intended by its manufacturer for consumption
16 by infants and that is commonly referred to as infant formula;

18 8. Water. Water to which no flavoring, whether artificial
or natural, has been added and which has not been artificially
20 carbonated;

22 9. Dietary aids. Any product, whether sold in liquid or
powder form that is intended by its manufacturer for use as a
24 dietary supplement or for weight reduction;

26 10. Consumer mix. Any powder or other base product that is
intended by its manufacturer to be sold and used for the purpose
28 of domestically mixing soft drinks by the ultimate consumer; and

30 11. Milk products. Any product containing milk or milk
products.

32 **§4854. Reports**

34 A distributor, manufacturer or wholesale dealer and any
36 retailer subject to the tax imposed by this chapter shall file a
monthly return with the assessor and pay the tax on or before the
38 15th day of the month following the month in which the sale or
purchase was made. The returns must be made on forms prescribed
40 by the assessor. The return must contain any information the
assessor requires for the proper administration of this chapter.
42 When a retailer is also acting as a distributor or wholesale
dealer, the duty to report and pay the tax imposed by this
44 chapter arises when the property is transferred to a retail store
for sale to the ultimate consumer, as reflected by the records of
46 the taxpayer.

48 **§4855. Disposition of revenues; Health Promotion Fund**

2 1. Health Promotion Fund. There is created the Health
Promotion Fund, referred to in this section as "the fund." All
4 revenue received from the tax imposed by this chapter, after the
cost of administration of this chapter by the bureau has been
6 deducted, must be paid to the fund. Money in the fund does not
lapse but is carried forward for the purposes of this section.
Expenditures from the fund may be made only in accordance with
8 subsection 2.

10 2. Use of fund. Money in the fund may be used for the
following purposes.

12
14 A. Fifty percent of money in the fund must be distributed
by the Department of Education each year on a per-student
16 basis to school administrative units that adopt policies
that prohibit the advertising and sale of soft drinks and
18 candy on all school property and that make available on a
daily basis Maine dairy products and fresh in-season farm
20 products for sale and consumption as snack foods and as part
of regular school meal programs.

22 B. Fifty percent of money in the fund must be used by the
Department of Human Services for a dental health residency
24 program for one or more qualifying hospitals in the State
based on competitive applications.

26 **§4856. Licenses**

28
30 1. Distributor, manufacturer or wholesale dealer. Any
distributor, manufacturer or wholesale dealer who sells or offers
32 for sale syrups, simple syrups, powders or base products or soft
drinks for sale to retailers within the State shall obtain from
34 the bureau a license for the privilege of conducting such
business within the State.

36 2. Retailer. Any retailer who purchases syrups, simple
syrups, powders or base products or soft drinks from an
38 unlicensed distributor, manufacturer or wholesale dealer shall
obtain a license from the bureau for the privilege of conducting
40 such business.

42 3. Location; display. Any person required to obtain a
license under this chapter shall obtain a license for each place
44 of business owned or operated by that person. The license must
be conspicuously displayed at the place of business for which it
46 was issued.

48 **§4857. Rules**

2 The assessor may adopt rules under the Maine Administrative
3 Procedure Act to provide for the administration of this chapter.
4 These rules may provide for a fee to cover the cost of issuing
5 licenses required under section 4856. Rules adopted under this
6 section are routine technical rules as defined in Title 5,
7 chapter 375, subchapter 2-A.

8 **Sec. 3. Dental health residency program.** The Department of
9 Human Services shall establish a dental health residency program
10 for the purpose, which is funded pursuant to the Maine Revised
11 Statutes, Title 36, section 4855, subsection 2, of improving the
12 dental health of residents of the State. The program shall make
13 grants to one or more qualifying hospitals in the State based on
14 competitive applications.

16

SUMMARY

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19 This bill establishes a tax on the distribution, manufacture
20 and wholesale of soft drinks and soft drink products. One half
21 of the revenue from the tax would be distributed to schools that
22 prohibit the advertising and sale of soft drinks and candy and
23 that sell Maine dairy and farm products. The other 1/2 of the
24 revenue would be used to establish dental residency programs at
25 one or more qualifying Maine hospitals.