

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1550

H.P. 1068

House of Representatives, April 27, 2017

**An Act To Tax Sugar-sweetened Beverages To Fund Programs To
Provide Resources for Veterans and Others**

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HAMANN of South Portland.
Cosponsored by Senator MILLETT of Cumberland and
Representatives: BERRY of Bowdoinham, GATTINE of Westbrook, Speaker GIDEON of
Freeport, JORGENSEN of Portland, SYLVESTER of Portland, TIPPING of Orono, Senators:
CHENETTE of York, LIBBY of Androscoggin.

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

2 **Sec. 1. 4 MRSA §422, sub-§3** is enacted to read:

3 **3. Drug Court Fund.** The Drug Court Fund, referred to in this subsection as "the
4 fund," is established as a nonlapsing fund within the Judicial Department. The fund
5 receives a portion of the taxes and penalties collected under Title 36, chapter 723 and
6 may be used by the Judicial Department to support programs established under this
7 chapter.

8 **Sec. 2. 5 MRSA §20050-A** is enacted to read:

9 **§20050-A. Drug Treatment Fund**

10 The Drug Treatment Fund, referred to in this section as "the fund," is established as a
11 nonlapsing fund within the department. The fund receives a portion of the taxes and
12 penalties collected under Title 36, chapter 723. To the extent funds are available in the
13 fund, the department shall disburse funds to approved treatment facilities on behalf of
14 eligible patients whose insurance does not cover some or all of the charges for treatment.
15 The department shall establish rules governing eligibility for patients and the amounts
16 that may be paid from the fund for treatment services. Rules adopted under this section
17 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

18 By February 15, 2019 and annually thereafter, the commissioner shall submit to the
19 joint standing committee of the Legislature having jurisdiction over health and human
20 services matters a report describing the distribution of funds under this section.

21 **Sec. 3. 10 MRSA §996-A** is enacted to read:

22 **§996-A. Program to promote healthy food access**

23 The authority shall establish a supplemental financing and technical assistance
24 program designed to support the production and distribution of healthy local foods
25 produced in this State, referred to in this section as "the program." The program may
26 provide assistance to farms or other producers of healthy foods to support the production
27 and distribution of such foods to consumers in this State as well as to government
28 facilities, schools, hospitals and other institutions to secure access to healthy local foods
29 produced in this State.

30 **1. Fund.** The Healthy Food Access Fund, referred to in this section as "the fund," is
31 established as a nonlapsing fund within the authority. The fund receives a portion of the
32 taxes and penalties collected under Title 36, chapter 723. The department shall disburse
33 funds in the fund to support the program.

34 **2. Report.** By February 15, 2019 and annually thereafter, the authority shall submit
35 to the joint standing committee of the Legislature having jurisdiction over agriculture
36 matters a report describing the distribution of funds under the program.

37 **Sec. 4. 22 MRSA §3740-A** is enacted to read:

1 §3740-A. Head Start Fund

2 The Head Start Fund, referred to in this section as "the fund," is established as a
3 nonlapsing fund within the department. The fund receives a portion of the taxes and
4 penalties collected under Title 36, chapter 723. The commissioner shall make
5 distributions from the fund to support programs that promote school readiness of children
6 under 5 years of age from low-income families through education, health, social and
7 other services, including but not limited to preschool programs under Title 20-A, section
8 4271. The department may adopt rules governing disbursements from the fund. Rules
9 adopted under this section are routine technical rules as defined in Title 5, chapter 375,
10 subchapter 2-A.

11 By February 15, 2019 and annually thereafter, the commissioner shall submit to the
12 joint standing committee of the Legislature having jurisdiction over education and
13 cultural affairs a report describing the distribution of funds under this section.

14 Sec. 5. 36 MRSA c. 723 is enacted to read:

15 CHAPTER 723
16 SUGAR-SWEETENED BEVERAGES TAX

17 §4921. Short title

18 This chapter may be known and cited as "the Sugar-sweetened Beverages Tax Act."

19 §4922. Definitions

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

22 **1. Beverage for medical use.** "Beverage for medical use" means a beverage suitable
23 for human consumption and manufactured for use as an oral nutritional therapy for
24 persons who cannot absorb or metabolize dietary nutrients from food or beverages or for
25 use as an oral rehydration electrolyte solution for infants and children formulated to
26 prevent or treat dehydration due to illness. "Beverage for medical use" includes "medical
27 food" as defined in the Orphan Drug Act, 21 United States Code, Section 360ee(b)(3).
28 "Beverage for medical use" does not include beverages commonly referred to as sports
29 drinks or other beverages not formulated for specific medical conditions.

30 **2. Bottle.** "Bottle" means any closed or sealed container regardless of size or shape,
31 including those made of glass, metal, paper, plastic or any other material or combination
32 of materials.

33 **3. Bottled sugar-sweetened beverage.** "Bottled sugar-sweetened beverage" means
34 any sugar-sweetened beverage contained in a bottle that is ready for consumption without
35 further processing.

1 **4. Caloric sweetener.** "Caloric sweetener" means any sweetener suitable for human
2 consumption that has a caloric content of 5 or more calories per serving, including but not
3 limited to sucrose, fructose, glucose or other sugars or fruit juice concentrate.

4 **5. Consumer.** "Consumer" means a person who purchases a substance for that
5 person's own use and not for sale to another.

6 **6. Distributor.** "Distributor" means any person, including a manufacturer or
7 wholesale dealer, that receives, stores, manufactures, bottles or distributes bottled sugar-
8 sweetened beverages, syrups or powders for sale to retailers doing business in the State,
9 whether or not that person also sells such products to consumers.

10 **7. Milk.** "Milk" means natural liquid milk regardless of animal or plant source or
11 butterfat content; natural milk concentrate, whether or not reconstituted; or dehydrated
12 natural milk, whether or not reconstituted.

13 **8. Natural fruit juice.** "Natural fruit juice" means the liquid resulting from the
14 pressing of fruits or the liquid resulting from the dilution with water of dehydrated natural
15 fruit juice.

16 **9. Natural vegetable juice.** "Natural vegetable juice" means the liquid resulting
17 from the pressing of vegetables or the liquid resulting from the dilution with water of
18 dehydrated natural vegetable juice.

19 **10. Noncaloric sweetener.** "Noncaloric sweetener" means any sweetener suitable
20 for human consumption that has no caloric content, including, but not limited to,
21 aspartame, acesulfame potassium, neotame, saccharin, sucralose and stevia. For purposes
22 of this subsection, "no caloric content" means fewer than 5 calories per serving.

23 **11. Place of business.** "Place of business" means any place where sugar-sweetened
24 beverages, syrups or powders are manufactured or received for sale in the State.

25 **12. Powder.** "Powder" means any solid mixture of ingredients used in making,
26 mixing or compounding sugar-sweetened beverages by mixing with one or more other
27 ingredients, including water, ice, syrup, fruits, vegetables, natural fruit juice, natural
28 vegetable juice or carbonating gas or other gas.

29 **13. Retailer.** "Retailer" means any person who sells or otherwise dispenses in the
30 State a sugar-sweetened beverage to a consumer whether or not that person is also a
31 distributor.

32 **14. Sale.** "Sale" means the transfer of title or possession for valuable consideration
33 regardless of the manner by which the transfer is completed.

34 **15. Sugar-sweetened beverage.** "Sugar-sweetened beverage" means any
35 nonalcoholic beverage, carbonated or noncarbonated, that is intended for human
36 consumption and contains any added caloric sweetener. As used in this subsection,
37 "nonalcoholic beverage" means any beverage that contains less than 0.5% alcohol per
38 volume.

1 16. Syrup. "Syrup" means a liquid mixture of ingredients used in making sugar-
2 sweetened beverages by mixing with one or more other ingredients, including water, ice,
3 powder, fruits, vegetables, natural fruit juice, natural vegetable juice or carbonating gas or
4 other gas.

5 17. Water. "Water" means nonflavored water, water flavored with natural fruit juice
6 that has no calories or water flavored with natural flavor. "Water" includes artesian,
7 mineral, spring or well water and includes carbonated, distilled or purified water.

8 **§4923. Permit required; distributor**

9 After June 30, 2018, a person may not act as a distributor in this State without a
10 permit issued by the State Tax Assessor for each place of business owned and operated
11 by the distributor. A permit issued under this section is in addition to any permit required
12 under Title 32, chapter 27.

13 1. Application. An application for a permit must be filed on a form provided by the
14 State Tax Assessor for that purpose. The application must be subscribed and sworn to by
15 a person with legal authority to bind the business. The application must identify the
16 distributor or the owner of the distribution business, the distributor's mailing address, the
17 place of business for which the permit is sought, the nature of the distribution business
18 that is engaged in at that location and any other information the State Tax Assessor may
19 require. The State Tax Assessor may by rule establish a permit fee designed to cover the
20 costs of processing applications.

21 2. Issuance. Upon receipt of an application and any required permit fee, the State
22 Tax Assessor may issue to the applicant, for the place of business designated, a
23 nonassignable permit, authorizing the sale of sugar-sweetened beverages, syrups and
24 powders in the State. Permits issued pursuant to this section expire on June 30th of each
25 year and may be renewed annually.

26 3. Limitations. A permit may not be transferred. A permit must be prominently
27 displayed at all times in each of a distributor's places of business.

28 4. Violations; penalties. The following penalties apply to a violation of this section.

29 A. A distributor doing business in the State without holding a permit issued pursuant
30 to this section commits a civil violation for which a fine of not less than \$250 and not
31 more than \$500 must be adjudged.

32 B. A distributor that violates paragraph A after having been previously adjudicated
33 as violating paragraph A commits a civil violation for which a fine of not less than
34 \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

35 C. A distributor that sells bottled sugar-sweetened beverages, syrups or powders at
36 wholesale or retail without holding a permit issued pursuant to this section commits a
37 civil violation for which a fine of not less than \$250 and not more than \$500 must be
38 adjudged.

1 D. A distributor that violates paragraph C after having been previously adjudicated
2 as violating paragraph C commits a civil violation for which a fine of not less than
3 \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

4 **5. Revocation or suspension.** The State Tax Assessor may revoke or suspend a
5 permit of or refuse to issue a permit to any distributor that fails to comply with any
6 provision of this chapter. The State Tax Assessor may revoke or suspend a permit of a
7 person that is no longer doing business as a distributor. A person aggrieved by a
8 revocation or suspension may request reconsideration as provided in section 151.

9 **§4924. Tax imposed**

10 **1. Tax.** Beginning July 1, 2018, there is imposed an excise tax on every distributor
11 for the privilege of selling the products governed by this chapter in the State, calculated
12 as follows:

13 A. An amount of \$0.01 per ounce of bottled sugar-sweetened beverage sold to a
14 retailer;

15 B. An amount of \$0.01 per ounce of sugar-sweetened beverage produced from a
16 syrup or powder sold to a retailer, either as syrup or powder or as a sugar-sweetened
17 beverage derived from that syrup or powder. For purposes of calculating the tax, the
18 volume of sugar-sweetened beverage produced from syrups or powders is the larger
19 of the following:

20 (1) The largest volume resulting from use of the syrups or powders according to
21 any manufacturer's instructions; and

22 (2) The volume actually produced by the retailer, as reasonably determined by
23 the State Tax Assessor.

24 **2. Exemptions.** The following are exempt from the tax imposed under this section:

25 A. Bottled sugar-sweetened beverages, syrups and powders sold to the Federal
26 Government or a federally recognized Indian tribe;

27 B. Bottled sugar-sweetened beverages, syrups and powders sold by a distributor to
28 another distributor that holds a permit issued pursuant to this chapter. If the sale is to
29 a person that is both a distributor and a retailer, the sale is exempt but the tax is due
30 when that person resells the product to another retailer or to a consumer;

31 C. Beverages sweetened solely with noncaloric sweeteners;

32 D. Beverages consisting of 100% natural fruit juice or natural vegetable juice with
33 no added caloric sweetener;

34 E. Beverages in which milk is the primary ingredient or the first listed ingredient on
35 the label of the beverage;

36 F. Coffee or tea without added caloric sweetener;

37 G. Infant formula;

38 H. Beverages for medical use; and

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I. Water.

3. Retail price. A distributor, when selling to a retailer bottled sugar-sweetened beverages, syrups or powders on which the tax imposed by this section has been paid, shall clearly indicate that tax on the sales receipt. The excise tax imposed under this chapter may be added to the retail price of sugar-sweetened beverages, syrups or powders sold to consumers.

4. Retailer liability. A retailer that sells to consumers in this State bottled sugar-sweetened beverages, syrups or powders on which the tax imposed by this section has not been paid by a distributor is liable for the tax imposed at the point of sale to a consumer.

5. In addition to all other taxes. The taxes imposed by this section are in addition to any other taxes that may apply.

6. Deposit of receipt. The State Tax Assessor shall deposit all taxes and any fines collected under this chapter as follows:

- A. Twenty-five percent in the Veterans Fund established in Title 37-B, section 516;
- B. Thirty-seven and one-half percent to the Head Start Fund established in Title 22, section 3740-A;
- C. Eighteen and three-quarters percent to the Drug Treatment Fund established in Title 5, section 20050-A;
- D. Seven and one-half percent to the Obesity and Chronic Disease Fund established in Title 20-A, section 6631;
- E. Seven and one-half percent to the Healthy Food Access Fund established in Title 10, section 996-A;
- F. One and one-half percent to the After-school Program Fund established in Title 20-A, section 8901;
- G. One and one-half percent to the Drug Court Fund established in Title 4, section 422, subsection3; and
- H. Three-quarters of a percent to the Maine Drinking Water Fund established in Title 22, section 2610.

§4925. Returns and records

A distributor or retailer liable for the tax imposed by this chapter shall file, on or before the last day of each month, a return on a form prescribed and furnished by the State Tax Assessor together with payment of the tax due under this chapter. The return must report the quantity of all sugar-sweetened beverages, syrups and powders subject to the excise tax imposed by this chapter sold in the State by the distributor or retailer during the preceding calendar month as well as any other information required by the State Tax Assessor. A distributor or retailer liable for the tax imposed under this chapter shall keep at its principal place of business for at least 2 years after incurring the liability for payment of the tax a complete and accurate record of all sales subject to the tax.

1 **§4926. Violation; penalties**

2 **1. Violations.** A person subject to the provisions of this chapter that fails to pay the
3 entire amount of tax imposed by this chapter by the date that payment is due, fails to
4 submit a return or maintain records required by this chapter, violates any other provision
5 of this chapter other than section 4923 or violates rules adopted by the State Tax Assessor
6 under this chapter, other than rules implementing section 4923:

7 A. Commits a Class E crime; and

8 B. With respect to any tax due and not paid, is subject to an additional administrative
9 penalty equal to 50% of the tax due and not paid plus interest on all amounts due at a
10 rate of 12% per year from the date the tax was due until the tax is paid. For good
11 reason shown, the State Tax Assessor may waive all or part of the additional
12 administrative penalty but may not waive interest charges.

13 All taxes, penalties and interest imposed on any person under the provisions of this
14 chapter that are due and unpaid constitute a debt to the State and may be collected from
15 the person by suit or other appropriate legal action.

16 **§4927. Rules**

17 The State Tax Assessor may adopt rules to implement this chapter. Rules adopted
18 pursuant to this chapter are routine technical rules under Title 5, chapter 375, subchapter
19 2-A.

20 **Sec. 6. 37-B MRSA §516** is enacted to read:

21 **§516. Veterans Fund**

22 The Veterans Fund, referred to in this section as "the fund," is established as a
23 nonlapsing fund within the bureau. The fund receives a portion of the taxes and penalties
24 collected under Title 36, chapter 723. The director shall coordinate distributions from
25 this fund with distributions made under section 514.

26 **1. Distributions.** The director shall make distributions from the fund to support
27 programs offered by state agencies or by nonprofit entities for veterans that provide:

28 A. Employment assistance to veterans transitioning from military to civilian life;

29 B. Suicide prevention services;

30 C. Behavioral health services for veterans with post-traumatic stress disorder or
31 substance use disorder;

32 D. Outreach services to inform veterans of the availability of programs supported by
33 the fund;

34 E. Counseling and peer assistance for veterans charged with crimes;

35 F. Cash assistance and emergency services for veterans in need;

36 G. Transportation services to and from essential medical services; and

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H. Support for veterans seeking services from the United States Department of Veterans Affairs.

3. Report. By February 15, 2019 and annually thereafter, the director shall submit to the joint standing committee of the Legislature having jurisdiction over veterans affairs a report describing the distribution of funds under this section, including information about the specific uses of the funds by state agencies or nonprofit entities that receive the funds.

SUMMARY

This bill establishes an excise tax on sugar-sweetened beverages, including syrups and powders used to make sugar-sweetened beverages. Funds from the excise tax will be used to support the Drug Court Fund, the Veterans Fund, the Head Start Fund, the Drug Treatment Fund, the Obesity and Chronic Disease Fund, Healthy Food Access Fund, the After-school Program Fund and the Maine Drinking Water Fund.