

**HOUSE . . . . . No. 2972**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Kay Khan and Jon Santiago***

*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:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/5/2021</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/5/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/8/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/9/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/16/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/16/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>2/16/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>2/16/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/23/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/23/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/24/2021</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/24/2021</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/24/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/24/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/25/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>2/25/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/26/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/26/2021</i>

<i>Andres X. Vargas</i>	<i>3rd Essex</i>	<i>2/26/2021</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/26/2021</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/26/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>3/9/2021</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>3/11/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>3/11/2021</i>
<i>Edward R. Philips</i>	<i>8th Norfolk</i>	<i>3/15/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>3/29/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>4/7/2021</i>

**HOUSE . . . . . No. 2972**

By Representatives Khan of Newton and Santiago of Boston, a petition (accompanied by bill, House, No. 2972) of Kay Khan, Jon Santiago and others for legislation to impose an excise tax on distributors of certain drinks with added sugar and promoting healthy alternatives to such drinks. Revenue.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

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 2020 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 For the purposes of this section, the following words shall have the following meanings:

6 "Beverage for medical use" means a beverage suitable for human consumption and  
7 manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize  
8 dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for  
9 infants and children formulated to prevent or treat dehydration due to illness. "Beverage for  
10 medical use" shall also mean a "medical food" as defined in section 5(b)(3) of the Orphan Drug  
11 Act (21 U.S.C. 360ee(b)(3)); this Act defines medical food as "a food which is formulated to be

12 consumed or administered enterally under the supervision of a physician and which is intended  
13 for the specific dietary management of a disease or condition for which distinctive nutritional  
14 requirements, based on recognized scientific principles, are established by medical evaluation.”  
15 “Beverage for medical use” shall not include drinks commonly referred to as “sports drinks” or  
16 any other common names that are derivations thereof.

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

20 "Bottled sugary drink" means any sugary drink contained in a bottle that is ready for  
21 consumption without further processing such as, without limitation, dilution or carbonation.

22 “Commissioner” means the commissioner of revenue and his or her authorized agents  
23 and employees.

24 "Commonwealth” means the commonwealth of Massachusetts.

25 "Consumer" means a person who purchases a sugary drink for consumption and not for  
26 sale to another.

27 "Department" means the department of public health.

28 "Distributor" means any person, including manufacturers and wholesale dealers, who  
29 receives, stores, manufactures, bottles and/or distributes bottled sugary drinks, syrups or  
30 powders, for sale to retailers doing business in the commonwealth, whether or not that person  
31 also sells such products to consumers.

32 "Fund" means the Commonwealth's Health Promotion Fund, established pursuant to  
33 section 5.

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

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

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

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

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

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

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

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

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

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

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

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

72 “Water”, means no-calorie liquid water, which is either non-flavored or flavored without  
73 the use of sugars. “Water” may be carbonated (including club soda and seltzer), still, distilled  
74 and/or purified.

75 Section 2. Tax imposed.

76 There is hereby imposed an excise tax on every distributor for the privilege of selling the  
77 products governed by this chapter in the commonwealth, calculated as follows:

78 The tax shall be calculated using the following tiered system.

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

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

82 (iii.) Beverages with 30 grams of sugars or more per 12 fluid ounces will be taxed at a  
83 rate of \$0.02 per ounce.

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

87 (i.) If the beverages made from the syrup or powder have 7.5 grams of sugars or less per  
88 12 fluid ounces, the syrup or powder will not be taxed.

89 (ii.) If the beverages made from the syrup or powder have more than 7.5 grams but less  
90 than 30 grams of sugars per 12 fluid ounces, the syrup or powder will be taxed at a rate equal to  
91 \$0.01 per ounce of sugary drink produced from that syrup or powder.

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

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

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

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

106 Manufacturers, bottlers, wholesalers or distributors shall add the amount of the tax  
107 imposed by this section to the retail price of sugary drinks.

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

111 The taxes imposed by this section are in addition to any other taxes that may apply to  
112 persons or products subject to this chapter.

113 Section 3. Report of Sales and Tax Remittances.

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

121 Section 4. Records of Distributors

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

126 Section 5. Exemptions.

127 The following shall be exempt from the tax imposed by this chapter:

128 Bottled sugary drinks, syrups, and powders sold to the United States Government and  
129 American Indian Tribal Governments;

130 Bottled sugary drinks, syrups, and powders sold by a distributor to another distributor  
131 that holds a permit issued pursuant to this chapter if the sales invoice clearly indicates that the  
132 sale is exempt. If the sale is to a person who is both a distributor and a retailer, the sale shall also

133 be tax exempt and the tax shall be paid when the purchasing distributor or retailer resells the  
134 product to a retailer or a consumer. This exemption does not apply to any other sale to a retailer;

135 Beverages sweetened solely with non-nutritive sweeteners;

136 Beverages consisting of 100 per cent natural fruit or vegetable juice with no added  
137 sugars;

138 Beverages in which milk, or soy, rice or similar milk substitute, is the primary ingredient  
139 or the first listed ingredient on the label of the beverage;

140 Coffee or tea without added sugars;

141 Infant formula;

142 Beverages for medical use;

143 Water without added sugars.;

144 Unsweetened drinks to which a purchaser can add, or can request that a seller add, sugar  
145 or a sweetener at the point of sale.

146 Section 6. Unpaid Taxes and Debt.

147 All taxes imposed under the provisions of this chapter remaining due and unpaid shall  
148 constitute a debt to the commonwealth, which may be collected from the person owing same by  
149 suit or otherwise.

150 Section 7. Records of commissioner.

151 At the end of each month, the auditor of the commonwealth shall carefully check the  
152 books and records of the commissioner and his accounts with any bank or banks, and shall verify  
153 the amounts collected pursuant to this chapter and paid into the Children’s Health Promotion  
154 Fund. Any duty herein required of the auditor of the commonwealth may be performed by any  
155 duly trained clerk in his office, designated by the auditor of the commonwealth for that purpose.

156 Section 8. Exercise of Powers and Duties.

157 Whenever in this chapter any reference is made to any power or duty of the  
158 commissioner, the reference is construed to mean that the power or duty shall be exercised by the  
159 commissioner, under the supervision and direction of the commissioner.

160 Section 9. Rules and Regulations.

161 The commissioner is hereby empowered to make such rules and regulations, and provide  
162 such procedural measures, in cooperation with the auditor of the commonwealth, as may be  
163 reasonably necessary to accomplish the purposes of this chapter.

164 Section 10. Grant of Local Authority

165 Nothing in this chapter shall preempt or prohibit adoption and implementation of any  
166 policy related to sugary drinks, including taxation, by a municipal government or political  
167 subdivision of the commonwealth.

168 Section 11. Severability.

169 If any provision of this chapter, any rule or regulation made under this chapter, or the  
170 application of this chapter to any person or circumstance is held invalid by any court of  
171 competent jurisdiction, the remainder of the chapter, rule, or regulation, and the application of

172 the provision to other persons or circumstances shall not be affected. The invalidity of any  
173 section or sections or parts of any section of this chapter shall not affect the validity of the  
174 remainder of the chapter.

175 SECTION 2. The Massachusetts General Laws, as appearing in the 2020 Official Edition,  
176 are hereby amended by inserting after Section 2I of Chapter 111 the following new chapter:-

177 Section 2J. COMMONWEALTH HEALTH PROMOTION FUND

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

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

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

192 (i.) Funding for access to community health care

193 (ii) Expansion of the SNAP Healthy Incentive Program as funded in item 4400-1004 of  
194 section 2 of chapter XX of the acts of 2020.

195 (iii.) Funding for the department of elementary and secondary education to support and  
196 promote nutrition programs K-12 schools serving low-income communities

197 (iv.) Funding for the department of early education and care to support and promote  
198 nutrition programs for preschools, nursery schools, and childcare facilities serving low-income  
199 communities.

200 (v.) A municipal grant program for the creation and improvement of water fountains,  
201 installation of water filling stations, improvement of water quality, and increasing water access  
202 in schools and early education facilities serving low-income communities.

203 Section 2K. COMMONWEALTH HEALTH PROMOTION ADVISORY BOARD

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

208 The board shall consist of: the commissioner of public health or a designee, who shall  
209 serve as chairperson; the house and senate chairs of the joint committee on public health; the  
210 house and senate chairs of the joint committee on health care financing; the secretary of health  
211 and human services or a designee; and 16 persons to be appointed by the governor, 1 of whom  
212 shall be a person with expertise in the field of public health economics; 1 of whom shall be a  
213 person with expertise in public health research; 1 of whom shall be a person with expertise in the

214 field of health equity; 1 of whom shall be a person from a local board of health for a city or town  
215 with a population greater than 50,000; 1 of whom shall be a person of a board of health for a city  
216 or town with a population of fewer than 50,000; 1 of whom shall be representatives of a  
217 community health center; 1 of whom shall be a person from a community hospital, 1 of whom  
218 shall be a person from a consumer health organization; 1 of whom shall be a person from a  
219 hospital association; 1 of whom shall be a person from a statewide public health organization; 1  
220 of whom shall be a representative of the interest of businesses; 1 of whom shall be from an  
221 hunger organization; 1 of whom shall be from a food systems collaborative; 1 of whom shall  
222 administer an employee assistance program; 1 of whom shall be a public health nurse or a school  
223 nurse; and 1 of whom shall be a person from school food services .

224 Section 2L Evaluation of the Commonwealth's Health Promotion Fund

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

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

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