

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3085

**FISCAL
NOTE**

BY DELEGATE ELLINGTON

[Introduced March 14, 2017; Referred
to the Committee on Health and Human Resources
then Finance.]

1 A BILL to amend and reenact §11-19-1 and §11-19-2 of the Code of West Virginia, 1931, as
 2 amended, all relating to the tax on bottled soft drinks; modifying the tax to 1¢ per ounce;
 3 redistributing the revenue generated to all three medical schools in the state; rearranging
 4 and updating definitions; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

1 That §11-19-1 and §11-19-2 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted, all to read as follows:

ARTICLE 19. SOFT DRINKS TAX.

§11-19-1. Definitions.

1 As used in this article:

2 (1) "Bottled soft drinks" ~~shall include~~ includes any and all nonalcoholic beverages, whether
 3 carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsi cola, doctor pepper,
 4 root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated
 5 water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft
 6 drinks" of whatever kind, which are closed and sealed in glass, plastic, paper, or any other type
 7 of container, envelope, package or bottle, whether manufactured with or without the use of any
 8 syrup. The term "bottled soft drinks" shall not include fluid milk to which no flavoring has been
 9 added, or natural undiluted fruit juice or vegetable juice.

10 (11) "Commissioner" means the State Tax Commissioner, and where the meaning of the
 11 context requires, all deputies and employees duly authorized by him or her.

12 (10) "Distributor" ~~shall mean~~ means any person who manufactures, bottles, produces or
 13 purchases for sale to retail dealers any bottled soft drink or soft drink syrup.

14 (2) "Natural undiluted fruit juice" ~~shall mean~~ means the liquid resulting from the pressing
 15 of fruit with or without sweetener being added, or the liquid resulting from the reconstitution of
 16 natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice with or
 17 without sweetener being added.

18 ~~(3)~~ "Natural undiluted vegetable juice" ~~shall mean~~ means the liquid resulting from the
19 pressing of vegetables with or without sweetener being added or the liquid resulting from the
20 reConstitution of natural vegetable juice concentrate by the restoration of water to dehydrated
21 natural vegetable juice with or without sweetener being added.

22 ~~(7)~~ "Person" ~~shall mean~~ means and ~~include~~ includes an individual, firm, partnership,
23 association or corporation.

24 ~~(9)~~ "Retail dealer" includes every person other than a wholesale dealer mixing, making,
25 compounding or manufacturing any drink from a soft drink syrup or powder base, or a person
26 selling such syrup or powder.

27 ~~(6)~~ "Simple syrup" ~~shall mean~~ means the making, mixing, compounding or manufacturing,
28 by dissolving sugar and water or any other mixtures that will create simple syrup to which may or
29 may not be added concentrates or extracts.

30 ~~(5)~~ "Soft drink syrups and powders" ~~shall include~~ includes the compound mixture or the
31 basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or
32 compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit, milk or
33 any other product suitable to make a soft drink, among such syrups being such products as coca
34 cola syrup, chero cola syrup, pepsi cola syrup, doctor pepper syrup, root beer syrup, nu-grape
35 syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple
36 syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold
37 or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar
38 places as well as those powder bases prepared for the purpose of domestically mixing soft drinks
39 such as kool aid, oh boy drink, tip top, miracle aid and all other similar products.

40 ~~(4)~~ "Sweetener" ~~shall mean~~ means sugar only, artificial or natural, which singularly flavors
41 the taste of a natural undiluted fruit juice or natural undiluted vegetable juice.

42 ~~(8)~~ "Wholesale dealer" includes only those persons who sell any bottled soft drink or soft
43 drink syrup to retail dealers for the purpose of resale.

§11-19-2. Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.

1 (a) For the purpose of providing revenue for the construction, maintenance and operation
2 of a four-year school of medicine, dentistry and nursing of West Virginia University, an excise tax
3 is hereby levied and imposed ~~on and after~~ effective midnight of June 30, 1951, upon the sale,
4 use, handling or distribution of all bottled soft drinks and all soft drink syrups, whether
5 manufactured within or without this state, as follows:

6 (1) On each bottled soft drink, a tax of 1¢ on each sixteen and nine-tenths fluid ounces, or
7 fraction thereof, or on each one-half liter, or fraction thereof contained therein.

8 (2) On each gallon of soft drink syrup, a tax of 80¢, and in like ratio on each part gallon
9 thereof, or on each four liters of soft drink syrup a tax of 84¢, and in like ratio on each part four
10 liters thereof.

11 (3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks,
12 a tax of 1¢ or on each 28.35 grams, or fraction thereof, a tax of 1¢.

13 (b) Any person manufacturing or producing within this state any bottled soft drink or soft
14 drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any
15 other person who is the original consignee of any bottled soft drink or soft drink syrup
16 manufactured or produced outside this state, or who brings such drinks or syrups into this state,
17 ~~shall be~~ is liable for the excise tax hereby imposed. The excise tax ~~hereby imposed shall~~ may not
18 be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured,
19 sold, used or distributed in this state.

20 (c) All revenue collected by the commissioner under the provisions of this article, less ~~such~~
21 the costs of administration as are hereinafter provided for, shall be paid by him or her into a special
22 Medical School Fund, which is hereby created in the State Treasury, to be used solely for the
23 construction, maintenance and operation of a four-year school of medicine, dentistry and nursing,
24 as otherwise provided by law.

25 (d) (1) Effective July 1, 2017, the rate of tax imposed pursuant to subsection (a) of this

26 section is levied at the rate of 1¢ per every one ounce of bottled soft drink and the provisions of
27 subsection (a) are superseded by this subsection.

28 (2) The revenue collected by the commissioner under the provisions of this article, less
29 the costs of administration as are hereinafter provided for, shall be paid by him or her into a special
30 Medical School Fund, which is created in the State Treasury, to be disbursed as follows:

31 (A) The first \$20 million collected is for the continued use of a four-year school of medicine,
32 dentistry and nursing at West Virginia University;

33 (B) From the remaining revenue, \$5 million is for the use of the School of Medicine at
34 Marshall University; and

35 (C) From any remaining revenue, \$5 million is for the use of the West Virginia Osteopathic
36 School.

37 (3) Any funds remaining following the distribution set forth in subdivision (2) of this
38 subsection is dedicated to the Bureau for Medical Services to help fund services for eligible
39 recipients.

NOTE: The purpose of this bill is to change the structure of the tax on bottled soft drinks to 1¢ per ounce and to rededicate the proceeds to all three medical schools in the state.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.