

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 365**

BY SENATORS PLYMALE, BALDWIN, AND WOELFEL

[Introduced January 21, 2019; Referred  
to the Committee on 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 redistributing the revenue-generated excise tax on bottled soft  
 3 drinks to all four-year medical schools in the state.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 19. SOFT DRINKS TAX.**

**§11-19-1. Definitions.**

1 As used in this article:

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

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

13 "Distributor" means any person who receives, stores, manufactures, bottles, produces,  
 14 distributes and/or purchases for sale to retail dealers any bottled soft drink or soft drink syrup or  
 15 powder, whether or not that person also sells such products to consumers.

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

20 (~~3~~) "Natural undiluted vegetable juice" ~~shall~~ means the liquid resulting from the pressing

21 of vegetables with or without sweetener being added or the liquid resulting from the reconstitution  
22 of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable  
23 juice with or without sweetener being added.

24 "Person" means and includes an individual, firm, partnership, association, corporation, or  
25 any other legal entity.

26 "Retail dealer" includes every person other than a wholesale dealer who sells or otherwise  
27 dispenses bottle soft drinks, or mixes, makes, compounds, or manufactures any drink from a soft  
28 drink syrup or powder base, or a person selling such syrup or powder.

29 ~~(4) "Sweetener" shall means~~ any substance suitable for human consumption that humans  
30 perceive as sweet and includes, without limitation, sucrose, fructose, glucose, or other sugars.  
31 "Sweetener" includes noncaloric sweeteners. ~~sugar only, artificial or natural, which singularly~~  
32 ~~flavors the taste of a natural undiluted fruit juice or natural undiluted vegetable juice~~

33 ~~(5) "Soft drink syrups and powders" shall includes the compound mixture or the basic~~  
34 ~~ingredients, whether dry or liquid, practically and commercially usable in making, mixing or~~  
35 ~~compounding soft drinks by the mixing thereof with~~ one or more other ingredients, including  
36 without limitation, carbonated or plain water, ice, fruit, milk or any other product suitable to make  
37 a soft drink, ~~among such syrups being such products as coca cola syrup, chero cola syrup, pepsi~~  
38 ~~cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup,~~  
39 ~~chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder,~~  
40 ~~malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing~~  
41 soft drinks commercially at soda fountains, restaurants or similar places as well as those syrups  
42 and powder bases prepared for the purpose of domestically mixing soft drinks. ~~such as keol-aid,~~  
43 ~~oh-boy drink, tip top, miracle-aid and all other similar products~~

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

47 ~~(7) "Person" shall mean and include an individual, firm, partnership, association, or~~  
48 ~~corporation~~

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

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

54 ~~(10) "Distributor" shall mean any person who manufactures, bottles, produces, and/or~~  
55 ~~purchases for sale to retail dealers any bottled soft drink or soft drink syrup.~~

56 ~~(11) "Commissioner" means the state tax commissioner, and where the meaning of the~~  
57 ~~context requires, all deputies and employees duly authorized by him~~

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

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

7 (1) On each bottled soft drink, a tax of one cent on each 16 and nine-tenths fluid ounces,  
8 or fraction thereof, or on each one-half liter, or fraction thereof contained therein.

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

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

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

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

NOTE: The purpose of this bill is to redistribute the revenue generated excise tax on bottled soft drinks to all four-year 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.