

HOUSE No. 2701

By Mr. Brownsberger of Belmont, a petition (accompanied by bill, House, No. 2701) of William N. Brownsberger and others for legislation to provide for taxation of certain minimally nutritious snack foods and establish a wellness trust fund. Revenue.

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 passage of the accompanying bill:

An Act to establish a wellness trust.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	24th Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
John P. Fresolo	16th Worcester
James J. O'Day	14th Worcester District

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO ESTABLISH A WELLNESS TRUST.

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

2 There shall be established on the books of the commonwealth a Wellness Trust, which shall be a distinct
3 fund for the purpose of supporting improved access for all residents to fresh, healthy, local food and
4 exercise and other activities to prevent chronic disease and promote health, prioritizing communities with
5 a disproportionate burden of obesity and chronic disease. This fund shall not be subject to further
6 appropriation.

7 The commissioner of public health shall administer the Wellness Trust, in consultation with other state
8 entities where relevant to the goals stated above.

9 There shall be credited to the Wellness Trust fifty percent of the proceeds from Section 2 and 3 of this act.
10 The monies shall be expended solely for the purpose described herein.

11 Section 2

12 The following chapter shall be inserted into the general laws of the commonwealth after chapter 65C

13 Chapter 65D.

14 Section 1. Minimally Nutritious Snack Foods Tax

15 (a) Definitions

16 "minimally-nutritious snack foods" shall mean any item that is ordinarily sold for consumption
17 without further preparation and does not meet the most recent Institute of Medicine standards for
18 high school students.

19 (b) Tax rate

20 There is hereby levied and there shall be collected a 10% tax on the wholesale cost of sales of
21 non-nutritious snack food as defined in this section.

- 22 (c) This tax shall be paid by distributors, manufacturers, wholesale dealers, or retailers who purchase
23 minimally nutritious snack foods from an unlicensed distributor, wholesaler or manufacturer. The
24 tax shall be paid monthly to the commissioner of the department of revenue in a format to be
25 specified by the commissioner.

26 Section 2 Sweetened Beverage Tax

- 27 (a) Definitions. As used in this chapter, terms shall have the following meanings, unless the context
28 indicates otherwise:

29 (1) "Bottle" means any closed or sealed glass, metal, paper, plastic, or any other type of
30 container regardless of the size or shape of such container.

31 (2) "Bottled soft drinks" means any complete, ready to consume soft drink contained in any
32 bottle.

33 (3) "Distributor, manufacturer, or wholesale dealer" means any person who receives, stores,
34 manufactures, bottles or sells bottled soft drinks, soft drink syrups, simple syrups, or powders or
35 base products for mixing, compounding or making soft drinks for sale to retail dealers, other
36 manufacturers, wholesale dealers or distributors for resale purposes.

37 (4) "Milk" means natural liquid milk regardless of animal source or butter fat content; or natural
38 milk concentrate, whether or not reconstituted, regardless of animal source or butter fat content or
39 dehydrated natural milk whether or not reconstituted.

40 (5) "Natural fruit juice" means the original liquid resulting from the pressing of fruit or the liquid
41 resulting from the reconstitution of natural fruit juice concentrate or the liquid resulting from the
42 restoration of water to dehydrated natural fruit juice.

43 (6) "Natural vegetable juice" means the original liquid resulting from the pressing of vegetables
44 or the liquid resulting from the reconstitution of natural vegetable juice concentrate or the liquid
45 resulting from the restoration of water to dehydrated natural vegetable juice.

46 (7) "Non-alcoholic beverage" means and includes all beverages not subject to tax under M.G.L.
47 Chapter 64h, section 2.

48 (8) "Place of business" means any place where soft drinks, syrups, simple syrups, powder or base
49 products are manufactured or any place where bottled soft drinks, soft drink syrup, simple syrup,
50 soft drink powder or other soft drink base product or any other item taxed under this act are
51 received.

52 (9) "Powder" or "other base" means a solid mixture of basic ingredients used in making, mixing
53 or compounding soft drinks by mixing the powder or other base with water, ice, syrup or simple
54 syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a
55 complete soft drink.

56 (10) "Retailer" or "retail dealer" means any person other than a manufacturer, distributor or
57 wholesaler, who receives, stores, mixes, compounds or manufacturers any soft drink and sells or
58 otherwise dispenses the same to the ultimate consumer.

59 (11) "Sale" means the transfer of title or possession for a valuable consideration of tangible
60 personal property regardless of the manner by which the transfer is accomplished. When a retailer
61 is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed by this act
62 arises when the property is transferred to a retail store for sale to the ultimate consumer as
63 reflected by the records of the taxpayer.

64 (12) "Simple syrup" means a mixture of sugar and water.

65 (13) "Soft drink" means any non-alcoholic beverage sold for human consumption including, but
66 not limited to, the following: soda water, ginger ale, all drinks commonly referred to as cola,
67 lime, lemon, lemon-lime and other flavored drinks whether naturally or artificially flavored,
68 including any fruit or vegetable drink containing fifty percent (50%) or less natural fruit juice,
69 natural vegetable juice, and all other drinks and beverages commonly referred to as soft drinks
70 but not including coffee or tea unless the coffee or tea is bottled as a liquid for sale.

71 (14) "Syrup" means the liquid mixture of basic ingredients used in making, mixing or
72 compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables,
73 fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

74 (b.). Licenses

75 All distributors, wholesalers or manufacturers of soft drinks whether located within or without the
76 commonwealth of Massachusetts, who sell or offer syrups, simple syrups, powders or base products, or
77 soft drinks for sale to retail dealers within the commonwealth of Massachusetts shall obtain a license
78 for the privilege of conducting such business within Massachusetts from the department of agricultural
79 resources.

80 (1) Any retailer who purchases syrups, simple syrups, powders or base products, or soft drinks
81 from an unlicensed manufacturer, wholesaler or distributor shall obtain a license for the privilege
82 of conducting such business from the commissioner of the department of agricultural resources.

83 (2) Any person required to obtain a license under this act shall obtain a license for each place of
84 business owned or operated by him.

85 (3) The license shall be conspicuously displayed at the place of business for which it was issued.

86 (c). Tax rate

87 There is hereby levied and there shall be collected a tax upon every distributor, manufacturer or wholesale
88 dealer to be calculated as follows:

89 (1) 8% of the cost

90 i. per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the
91 commonwealth of Massachusetts.

92 ii. per gallon for each gallon of bottled soft drinks sold or offered for sale in the commonwealth of
93 Massachusetts.

94 iii. for each gallon of soft drink which may be produced from each package or container by
95 following the manufacturer's directions in the case in which a package or container of powder or other
96 base product other than a syrup or simple syrup is sold or offered for sale in Massachusetts. This tax
97 applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer
98 after the liquid soft drink is produced by the retailer.

99 (d.) Retailer tax

100 (1) Any retailer or retail dealer who purchases bottled soft drinks, soft drink syrup, simple syrup,
101 powder or base product from an unlicensed distributor, manufacturer or wholesale dealer, shall be liable
102 for the tax levied in subsection (c.) of this Act on those purchases.

103 (2) A retailer shall not be subject to this tax if the retailer purchases syrups, simple syrups, powders or
104 base products, or soft drinks from a supplier licensed under subsection (b.) of this Act.

105 (e.) Exemptions

106 The following shall be exempt from the tax levied by this act:

107 (1) Syrups, simple syrups, powders or base products, or soft drinks sold to the United States Government.

108 (2) Syrups, simple syrups, powders or base products, or soft drinks exported from the State of
109 Massachusetts by a distributor, wholesaler or manufacturer.

110 (3) Any powder or base product that is used in preparing coffee or tea.

111 (4) Any frozen concentrate or freeze dried concentrate to which only water is added to produce a soft
112 drink containing more than fifty percent (50%) natural fruit juice or natural vegetable juice.

113 (5) Any soft drink containing more than fifty percent (50%) natural fruit juice or natural vegetable juice.

114 (6) Syrups, simple syrups, powders or base products, or soft drinks sold by one distributor, wholesaler or
115 manufacturer to another distributor, wholesaler or manufacturer who holds a license issued by the
116 commissioner of agricultural resources under the provisions of this act as a distributor, wholesaler or
117 manufacturer provided that the license number of the distributor, wholesaler, manufacturer to whom the
118 soft drink is sold is clearly shown on the invoice for the sale which is claimed to be exempt. This
119 exemption shall not apply to any sale to a retailer.

120 (7) Any product whether sold in liquid or powder form which is intended by the manufacturer for
121 consumption by infants and which is commonly referred to as "infant formula".

122 (8) Any product whether sold in liquid or powder form which is intended by the manufacturer for use as a
123 dietary supplement or for weight reduction.

124 (9) Water to which no flavoring, whether artificial or natural, nor carbonation has been added.

125 (10) Any powder or other base product which is intended by the manufacturer to be sold and used for the
126 purpose of domestically mixing soft drinks by the ultimate consumer.

127 (11) Any product containing milk or milk products.

128 (f.) Tax payment

129 This tax shall be paid by the distributor, wholesaler, or manufacturer when the syrup, powder or base
130 product or soft drink is sold. The tax levied by this act shall be shall be paid by a retailer who purchases
131 syrups, powder or base products or soft drinks from an unlicensed distributor, wholesaler or
132 manufacturer. These aforementioned parties subject to pay this tax shall pay it monthly to the
133 commissioner of the department of revenue in a format to be specified by the commissioner.