

HOUSE No.

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

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
5 with a disproportionate burden of obesity and chronic disease. This fund shall not be subject to further
6 appropriation.

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

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

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14

15 Section 2

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

17

18 Chapter 65D.

19

20 Section 1. Minimally Nutritious Snack Foods Tax

21 (a) Definitions

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

25

26 (b) Tax rate

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

29

30 (c) This tax shall be paid by distributors, manufacturers, wholesale dealers, or retailers who
31 purchase minimally nutritious snack foods from an unlicensed distributor, wholesaler or
32 manufacturer. The tax shall be paid monthly to the commissioner of the department of revenue
33 in a format to be specified by the commissioner.
34

35 Section 2 Sweetened Beverage Tax

36

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

84

85 (b.). Licenses

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

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

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

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

98

99 (c) . Tax rate

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

102 (1) 8% of the cost

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

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

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

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114 (d.) Retailer tax

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

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

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121 (e.) Exemptions

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

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

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

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

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

130 (5) Any soft drink containing more than fifty percent (50%) natural fruit¹ juice or natural vegetable juice.

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

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

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

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

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

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

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146 (f.) Tax payment

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

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