

S.B. NO. 1085

JAN 24 2013

A BILL FOR AN ACT

RELATING TO OBESITY PREVENTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In Hawaii, childhood obesity increased by
2 thirty-eight per cent between 1999 and 2009, and adult obesity
3 has more than doubled between 1996 and 2011. As a result of
4 health risks and complications related to obesity, this
5 generation of children may be the first generation not to
6 outlive their parents. Obesity-related medical expenditures in
7 Hawaii were calculated to be over \$470,000,000 in 2009, and are
8 continuing to increase. Sugar-sweetened beverages have been
9 identified by many scientific studies as a major contributor to
10 the costly obesity epidemic.

11 A 2004 study found that sugared soft drinks are the single
12 largest contributor of calorie intake in the United States.
13 According to nutritional standards, sugar-sweetened beverages
14 such as non-diet soft drinks, energy drinks, sweet teas, and
15 sports drinks offer little or no nutritional value and contain
16 massive quantities of added sugars and calories. For example, a
17 twelve-ounce can of soda contains the equivalent of
18 approximately eight to ten teaspoons of sugar. The American

1 Heart Association recently released a scientific statement
2 recommending that a person eating a 2,200-calorie diet should
3 eat no more than nine teaspoons of refined sugar in a day.
4 Sugar-sweetened beverages account for almost half the total
5 added-sugar intake in the United States population and sweetened
6 beverages displace healthier and more nutrient-dense beverages
7 like milk, one hundred per cent fruit juice, and water.

8 Refined sugars are one of several important factors that
9 promote tooth decay, also known as dental caries. Sugar-
10 sweetened beverages promote caries because they bathe the teeth
11 of frequent consumers in sugar water for long periods of time
12 during the day. An analysis of data from 1971 to 1974 found a
13 strong association between the frequency of between-meal
14 consumption of soda and dental caries. A recent study found
15 that young children who drank carbonated sugar-sweetened
16 beverages had almost double the risk of dental caries.

17 Americans are drinking more sugar-sweetened beverages than
18 ever before. From 1977 to 2002, Americans doubled the amount of
19 sugar-sweetened beverages they consumed. Currently, children
20 and adults consume an average of 172 and 175 calories
21 respectively from sugar-sweetened beverages a day. Children and
22 adolescents now consume ten to thirteen per cent of their daily
23 caloric intake from sugar-sweetened beverages. There is also a

1 strong correlation between weight gain and soda consumption. In
2 children each additional twelve ounce soft drink consumed per
3 day increases their likelihood of becoming obese by sixty per
4 cent. A 2009 California study found that adults who drink one
5 or more sodas a day are twenty-seven per cent more likely to be
6 overweight or obese than those who do not drink soda.

7 The Division of Physical Activity, Nutrition and Obesity at
8 the Centers for Disease Control and Prevention recommends
9 decreasing the consumption of sugar-sweetened beverages as one
10 of six evidence-based strategies for preventing and reducing
11 overweight and obesity. The 2010 Dietary Guidelines for
12 Americans also recommends reducing the intake of sugar-sweetened
13 beverages as a method to control calorie intake and manage body
14 weight.

15 A fee on sugar-sweetened beverages could have both fiscal
16 and health impacts. Economic dis-incentives are among the most
17 effective tools to change behavior as tobacco taxes have
18 demonstrated. Hawaii's tobacco taxes have helped to drive the
19 State's smoking rates to historic lows. Smoking among high
20 school students decreased sixty-four per cent from 1999 to 2011.
21 Price has been shown to influence food purchasing behavior as
22 well. Based on the best estimates to date of the responsiveness
23 of demand for soft drinks to changes in price, a ten per cent

1 fee could result in about an eight per cent reduction in
2 consumption. A more recent modeling study predicted a twenty-
3 four per cent decrease in consumption in response to a twenty
4 per cent increase in price, which corresponds to the penny-per-
5 ounce tax proposed in many states. The effects could be higher
6 for heavy consumers of soft drinks.

7 The revenues from such a fee would provide a dedicated
8 source of funding in Hawaii to accelerate the progress in
9 promoting health and obesity prevention, particularly amongst
10 children. In order to counteract marketing and environmental
11 cues that lead to unhealthy behaviors that impact the health of
12 Hawaii's children, it is important to provide access to programs
13 and services that promote a healthy lifestyle and good
14 beginnings.

15 Traditional models of attempting to deal with rising
16 obesity rates have focused on secondary prevention methods and
17 have not proven to be successful. Primary prevention methods
18 such as policy changes including the development of programs
19 that help make nutritious foods more affordable and accessible,
20 provide safe and healthy places for people to engage in physical
21 activity, and assist children in having a healthy start, are
22 necessary. A substantial and sustained response is needed to
23 create cultural and societal changes so healthy choices and

1 lifestyles are the norm in Hawaii. Providing a dedicated source
2 of funding for these programs is vital to their success.

3 The purpose of this Act is to discourage excessive
4 consumption of sugar-sweetened beverages and prevent obesity by,
5 among other things:

6 (1) Establishing a fee on sugar-sweetened beverages sold
7 in the State; and

8 (2) Designating the fees to be used for the coordination
9 of obesity prevention programs by the department of
10 health.

11 SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended
12 by adding a new part to be appropriately designated and to read
13 as follows:

14 **"PART . SUGAR-SWEETENED BEVERAGES FEE**

15 **§321-A Definitions.** As used in this part, unless the
16 context otherwise requires:

17
18 "Bottle" means any closed or sealed container regardless of
19 size or shape, including those made of glass, metal, paper, or
20 plastic or any other material or combination of materials.

21 "Bottled sugar-sweetened beverage" means any sugar-
22 sweetened beverage contained in a bottle that is ready for

1 consumption without further processing, such as dilution or
2 carbonation.

3 "Caloric sweetener" means any caloric substance suitable
4 for human consumption that humans perceive as sweet, including
5 sucrose, fructose, glucose, other sugars, and fruit juice
6 concentrates. "Caloric sweetener" does not include non-caloric
7 sweeteners. For purposes of this definition, "caloric" means a
8 substance that adds calories to the diet of a person who
9 consumes that substance.

10 "Consumer" means a person who purchases a sugar-sweetened
11 beverage for consumption and not for sale to another.

12 "Department" means the department of health.

13 "Director" means the director of health.

14 "Distributor" means any person, including manufacturers and
15 wholesale dealers, who receives, stores, manufactures, bottles
16 or distributes bottled sugar-sweetened beverages, syrup, or
17 powder, for sale to retailers doing business in the State
18 whether or not that person also sells such products to
19 consumers.

20 "Fund" means the obesity prevention special fund
21 established pursuant to section 321-F.

22 "Non-caloric sweetener" means any non-caloric substance
23 suitable for human consumption that humans perceive as sweet,

1 including aspartame, saccharin, stevia, and sucralose. "Non-
2 caloric sweetener" does not include caloric sweeteners. For
3 purposes of this definition, "non-caloric" means a substance
4 that contains fewer than five calories per serving.

5 "Place of business" means any place where sugar-sweetened
6 beverages, syrups, or powder are manufactured or received for
7 sale in the State.

8 "Powder" means any solid mixture of ingredients that
9 contains caloric sweetener, which is used in making, mixing, or
10 compounding sugar-sweetened beverages by combining the powder
11 with any one or more other ingredients, including water, ice,
12 syrup, simple syrup, fruits, vegetables, fruit juice, vegetable
13 juice, carbonation, or other gas.

14 "Retailer" means any person who sells or otherwise
15 dispenses in the State a sugar-sweetened beverage to a consumer
16 whether or not that person is also a distributor as defined in
17 this section.

18 "Sale" means the transfer of title or possession for
19 valuable consideration regardless of the manner by which the
20 transfer is completed.

21 "Sugar-sweetened beverage" means any nonalcoholic beverage,
22 carbonated or noncarbonated, which is intended for human
23 consumption and contains any added caloric sweetener. As used

1 in this definition, "nonalcoholic beverage" means any beverage
2 that contains less than one-half of one per cent alcohol per
3 volume. "Sugar-sweetened beverage" does not include:

- 4 (1) Beverages consisting of one hundred per cent natural
5 fruit or vegetable juice with no added caloric
6 sweetener. For purposes of this paragraph, "natural
7 fruit juice" and "natural vegetable juice" means the
8 original liquid resulting from the pressing of fruits
9 or vegetables, or the liquid resulting from the
10 dilution of dehydrated natural fruit juice or natural
11 vegetable juice;
- 12 (2) Milk without any added caloric sweetener. For
13 purposes of this paragraph "milk" means natural liquid
14 milk regardless of animal source or butterfat content;
15 natural milk concentrate, whether or not
16 reconstituted, regardless of animal source or
17 butterfat content; or dehydrated natural milk, whether
18 or not reconstituted and regardless of animal source
19 or butterfat content;
- 20 (3) Dietary aids. For purposes of this paragraph "dietary
21 aids" means liquid products manufactured for use as:

- 1 (A) An oral nutritional therapy for persons who
2 cannot absorb or metabolize dietary nutrients
3 from food or beverages;
- 4 (B) A source of necessary nutrition used due to a
5 medical condition; or
- 6 (C) An oral electrolyte solution for infants and
7 children formulated to prevent dehydration due to
8 illness;
- 9 (4) Infant formula; and
- 10 (5) Beverages containing less than 4.2 grams of added
11 caloric sweetener per 8 ounces of beverage.

12 "Syrup" means a liquid mixture of ingredients that contains
13 caloric sweetener, which is used in making, mixing, or
14 compounding sugar-sweetened beverages by combining the syrup
15 with one or more other ingredients including, water, ice, a
16 powder, simple syrup, fruits, vegetables, fruit juice, vegetable
17 juice, carbonation, or other gas.

18 **§321-B Registration.** Every distributor, and any person
19 intending to become a distributor, shall register as such with
20 the department on forms to be prescribed, prepared, and
21 furnished by the department.

1 **§321-C Fee imposed.** (a) Every distributor selling sugar-
2 sweetened beverages in the State shall pay a fee that is hereby
3 imposed at the following rates:

4 (1) \$1.28 per gallon of bottled sugar-sweetened beverages
5 sold or offered for sale to a retailer for sale in the
6 State to a consumer; and

7 (2) \$1.28 per gallon of sugar-sweetened beverage produced
8 from syrup or powder sold or offered for sale to a
9 retailer for sale in the State to a consumer, either
10 as syrup or powder or as a sugar-sweetened beverage
11 derived from that syrup or powder. The volume of
12 sugar-sweetened beverage produced from syrup or powder
13 shall be the largest volume resulting from use of the
14 syrup or powder according to the manufacturer's
15 instructions.

16 (b) Any retailer that sells bottled sugar-sweetened
17 beverages, syrup, or powder in the State to a consumer, on which
18 the fee imposed by this section has not been paid by a
19 distributor, shall be liable for the fee imposed in subsection
20 (a) at the time of sale to the consumer.

21 (c) A distributor shall add the amount of fees levied by
22 this section to the price of sugar-sweetened beverages sold to a
23 retailer, and the retailer shall pass the amount of the fee

1 through to a consumer as a component of the final retail
2 purchase price. The amount of the fees shall be stated
3 separately on all invoices, signs, sales or delivery slips,
4 bills, and statements that advertise or indicate the price of
5 such beverages.

6 **§321-D Exemptions.** The following shall be exempt from the
7 fee imposed by this part:

- 8 (1) Bottled sugar-sweetened beverages, syrups, and powder
9 sold by a distributor or a retailer expressly for
10 resale or consumption outside the State; and
11 (2) Bottled sugar-sweetened beverages, syrups, and powder
12 sold by a distributor to another distributor, if the
13 sales invoice clearly indicates that the sale is
14 exempt. If the sale is to a person who is both a
15 distributor and a retailer, the sale shall also be
16 exempt from the fee and the fee shall be paid when the
17 purchasing distributor who is also a retailer resells
18 the product to a retailer or a consumer. This
19 exemption shall not apply to any other sale to a
20 retailer.

21 **§321-E Payment.** Every distributor, on or before the
22 fifteenth day of each month, shall file with the department a
23 form identifying all sales of sugar-sweetened beverages made

1 during the preceding month. The form shall be prescribed by the
2 department and shall contain such information as it may deem
3 necessary for the proper administration of the sugar-sweetened
4 beverages fee.

5 **§321-F Establishment of the obesity prevention special**
6 **fund.** (a) There is established in the state treasury the
7 obesity prevention special fund to be administered by the
8 department, into which shall be deposited sugar-sweetened
9 beverages fees, interest payments, and penalty payments, imposed
10 pursuant to this part and as distributed in section 321-Q.

11 (b) All moneys in the fund shall be used for:

12 (1) All costs to implement this part, including:

13 (A) Administrative, audit, independent evaluation,
14 and compliance activities associated with
15 collection and payment of the deposits of the
16 sugar-sweetened beverages fee program;

17 (B) Personnel to implement the sugar-sweetened
18 beverages fee program, including registration and
19 enforcement activities; and

20 (C) Associated office expenses;

21 (2) Coordination and support of evidence-based statewide
22 obesity prevention programs by the department or other
23 state agencies, including programs relating to

1 diabetes, cardiovascular disease, promotion of healthy
2 lifestyles, physical fitness, nutrition, early
3 childhood health, and other prevention-oriented public
4 health programs. This funding shall support
5 population-based programs that use educational,
6 environmental, policy, and other public health
7 approaches to achieve the following goals:

- 8 (A) Reduce racial, ethnic, and socioeconomic
9 disparities in obesity rates;
- 10 (B) Improve access to and consumption of healthy,
11 safe, and affordable foods;
- 12 (C) Reduce access to and consumption of calorie-dense
13 nutrient-poor foods;
- 14 (D) Encourage physical activity;
- 15 (E) Decrease sedentary behavior; and
- 16 (F) Raise awareness about the importance of nutrition
17 and physical activity to obesity prevention.

- 18 (3) Support of prenatal surveillance and assessment, home
19 visitation, early childhood oral health prevention,
20 and coordination for families, infants, and children
21 at highest health and domestic violence risk. These
22 programs shall screen, coordinate, enroll or refer
23 families prenatally or at birth to resources to meet

1 their needs to achieve good beginnings through a
2 holistic approach; and

3 (4) Support of health promotion from birth to childhood to
4 provide a systems-approach that will ensure children
5 and families have healthy lifestyles and wellness.

6 **§321-G Records to be kept.** (a) Every distributor and
7 retailer shall keep a record of all sales of sugar-sweetened
8 beverages made by the distributor or retailer, in such form as
9 the department may prescribe.

10 (b) The records as required in subsection (a) shall be
11 made available, upon request, for inspection by the department;
12 provided that any proprietary information obtained by the
13 department shall be kept confidential and shall not be disclosed
14 to any other person, except:

15 (1) As may be reasonably required in an administrative or
16 judicial proceeding to enforce any provision of this
17 part or any rule adopted to implement this part; or

18 (2) Pursuant to an order issued by a court or
19 administrative agency hearings officer.

20 **§321-H Audit authority.** The director, or the duly
21 authorized agent of the director, may examine all records
22 required to be kept under this part and books, papers, and
23 records of any person engaged in the sale of sugar-sweetened

1 beverages to verify the accuracy of the payment of the fee
2 imposed by this part and other compliance with this part and
3 rules adopted pursuant thereto. Every person in possession of
4 such books, papers, and records and the person's agents and
5 employees shall give the director, or the duly authorized agent
6 of the director, the means, facilities, and opportunities for
7 the examination.

8 **§321-I Contract for administrative services.** The
9 department may contract the services of a third party to
10 administer the sugar-sweetened beverages fee program under this
11 part.

12 **§321-J Management and financial audit.** The auditor shall
13 conduct a management and financial audit of the program for the
14 first two fiscal years the program is in effect following the
15 implementation of rules, and for each fiscal year thereafter
16 ending in an even number year. The auditor shall submit the
17 audit report to the legislature and the department no later than
18 twenty days prior to the convening of the next regular session.
19 The costs incurred by the auditor for the audit shall be
20 reimbursed by the fund.

21 **§321-K Administration by director; rules.** The
22 administration and enforcement of this part are vested in the

1 director, who shall adopt rules in accordance with chapter 91
2 for the enforcement and administration of this chapter.

3 **§321-L Criminal penalties.** Any person subject to the
4 provisions of this part who fails to pay the entire fee imposed
5 by this part by the date that payment is due, fails to register
6 as a distributor, fails to submit a form, or fails to maintain
7 records as required by this part, or violates any other
8 provision of this part shall be guilty of a misdemeanor.

9 **§321-M Civil penalties.** Any person subject to the
10 provisions of this part who fails to pay the entire fee imposed
11 by part by the date that payment is due, fails to register as a
12 distributor, fails to submit a form, or fails to maintain
13 records required by this part, or violates any other provision
14 of this part shall be liable for the amount of the fee that is
15 due and a penalty equal to fifty per cent of the fee due. The
16 director, or the director's duly authorized representative, may
17 determine the amount of the fee and the penalty due in the event
18 of any nonpayment or underpayment and demand payment of all
19 sugar-sweetened beverage fees and penalties. Interest shall
20 accrue on nonpayment or underpayment of the fee at a rate of
21 eight per cent per year from the date the fee was due until
22 paid.

1 **§321-N Unpaid fees and debt.** All fees and penalties
2 imposed under the provisions of this part remaining due and
3 unpaid shall constitute a debt to the State, and may be
4 collected from the person owing same by suit or otherwise.

5 **§321-O Enforcement.** (a) If the director determines that
6 the sugar-sweetened beverage fee, penalties, or interest are due
7 and owing, the director shall notify the person of the amount
8 due and owing by certified mail.

9 (b) Any notice issued under subsection (a) shall become
10 final, unless not later than thirty days after the notice is
11 mailed, the person named therein requests in writing a hearing
12 before the director. Whenever a hearing is requested, the
13 amount owed shall become due and payable only upon completion of
14 all review proceedings and the issuance of a final order
15 confirming the fee, interest, and penalty in whole or in
16 part. Upon request for a hearing, the director shall require
17 the requestor to appear before the director for a hearing at the
18 time and place specified in the notice.

19 (c) Any hearing conducted under this section shall be
20 conducted as a contested case under chapter 91. If after a
21 hearing held pursuant to this section, the director finds that
22 all or a portion of the fee, interest, or penalty is due, the
23 director shall take appropriate collection activity.

1 (d) If the amount of any fee, interest, or penalty is not
2 paid to the department within thirty days after it becomes due
3 and payable, the director may institute a civil action in the
4 name of the State to collect the fee, interest, and penalty. In
5 any proceeding to collect the fee, interest, or penalty imposed,
6 the director need show only that:

7 (1) Notice was given;

8 (2) A hearing was held or the time granted for requesting
9 a hearing expired without a request for a hearing;

10 (3) The fee, interest, or penalty was imposed; and

11 (4) The fee, interest, or penalty remains unpaid.

12 (e) In connection with any hearing held pursuant to this
13 section, the director shall have the power to subpoena the
14 attendance of witnesses and the production of evidence on behalf
15 of all parties.

16 **§321-P Appeal.** Any person aggrieved as set forth in
17 section 91-14 may appeal the determination of the director to
18 the appropriate court having jurisdiction over the matter.

19 **§321-Q Distribution of revenues.** One hundred per cent of
20 revenues collected from the sugar-sweetened beverages fee,
21 interest payments, and penalty payments imposed pursuant to this
22 part shall be paid to the obesity prevention special fund,
23 established in section 321-F.

1 **§321-R Evaluation.** The department shall develop criteria
2 and components for an independent evaluation to assess the
3 impact of the fee imposed by this part on consumption of
4 products subject to the fee established by this part. The
5 evaluation shall seek to determine the impact of the fee on
6 sugar-sweetened beverage prices, consumer purchasing behavior,
7 and health outcomes. The reasonable costs of evaluation shall
8 be considered an implementation cost of this part.

9 **§321-S Annual reports.** The department shall provide
10 annual reports on the sugar-sweetened beverages fee program to
11 the legislature and the governor no later than twenty days prior
12 to the convening of each regular session for the period
13 beginning when the program is in effect following the
14 implementation of rules. The reports shall contain but not be
15 limited to describing:

- 16 (1) Performance indicators;
- 17 (2) Measures of effectiveness;
- 18 (3) Organization charts; and
- 19 (4) Position descriptions of every type of position created
20 and salaries paid to each employee.


21 If the administration of the program is contracted to a third
22 party pursuant to section 321-I, a copy of the contract shall be
23 appended to the next applicable report, and the contractor shall

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1 abide by these reporting requirements as well. The contractor's
2 pay scales shall be comparable to equivalent civil service
3 positions."

4 SECTION 3. In codifying the new sections added to chapter
5 321, Hawaii Revised Statutes, by section 2 of this Act, the
6 revisor of statutes shall substitute appropriate section numbers
7 for the letters used in the designations of, and references to,
8 the new sections in this Act.

9 SECTION 4. This Act, upon its approval, shall take
10 effect on July 1, 2014, except that the fees established by
11 section 321-C shall be imposed upon the adoption of
12 administrative rules.

13
14 INTRODUCED BY: 

15 BY REQUEST

16

Report Title:

Obesity Prevention; Sugar-Sweetened Beverage Fee

Description:

Imposes a fee on sugar-sweetened beverages. Establishes the Obesity Prevention Special Fund to support obesity prevention programs.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Governor

TITLE: A BILL FOR AN ACT RELATING OBESITY PREVENTION.

PURPOSE: The purpose of this bill is to discourage excessive consumption of sugar-sweetened beverages and to create a dedicated revenue source for programs designed to prevent obesity and enhance health.

MEANS: Add a new part to chapter 321, Hawaii Revised Statutes.

JUSTIFICATION: Several states and cities in recent years have considered imposing a fee on sugar-sweetened beverages to curb obesity and other health-related problems that stem directly from diets high in sugar and other refined sweeteners such as corn syrup.

Sugar-sweetened beverages have been identified by many scientific studies as a major contributor to our costly obesity epidemic. A 2004 study found that sugared soft drinks are the single largest contributor of calorie intake in the United States. Sugar-sweetened beverages account for almost half the total added-sugar intake in the U.S. population and sweetened beverages displace healthier and more nutrient-dense beverages like milk, 100 percent fruit juice, and water.

Americans are drinking more sugar-sweetened beverages than ever before. From 1977 to 2002, Americans doubled the amount of sugar-sweetened beverages they consumed. Currently children and adults consume an average of 172 and 175 calories respectively from sugar-sweetened beverages a day. Children and adolescents now consume 10 percent to 13 percent of their daily caloric intake from sugar-sweetened beverages, these

are calories that meet no nutritional need. There is also a strong correlation between weight and soda consumption. In children each additional 12 ounce soft drink consumed per day increases their likelihood of becoming obese by 60 percent. A 2009 California study found that adults who drink one or more soda a day are 27 percent more likely to be overweight or obese than those who do not drink soda.

Sugar-sweetened beverages also promote tooth decay (dental caries) because they bathe the teeth of frequent consumers in sugarwater for long periods of time during the day. A recent study found that young children who drank carbonated sugar-sweetened beverages had almost double the risk of dental caries.

Economic and public health research suggest that demand for sugar-sweetened beverages is responsive to price. A review of price elasticity research in 2010 predicted that consumption of sugar-sweetened beverages would decline between 8 percent to 10 percent in response to a 10 percent increase in price. A more recent modeling study predicted a 24 percent decrease in consumption in response to a 20 percent increase in price (in line with the penny-per-ounce tax proposed in many states). The effects could be higher for heavy consumers of soft drinks.

Impact on the public: Consumers of sugar-sweetened beverages will pay more for sugar-sweetened beverages.

Impact on the department and other agencies: The Department of Health is required to administer and collect the fee. Blind vendors managed by the Department of Human Services may experience revenue declines.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH 590.

OTHER AFFECTED AGENCIES: Department of Human Services.

EFFECTIVE DATE: July 1, 2014.