

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 669

Introduced by Assembly Member Monning
(Coauthor: Assembly Member Ammiano)

February 17, 2011

An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 669, as amended, Monning. Taxation: sweetened beverage tax: Children's Health Promotion Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, *on and after July 1, 2012*, impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, ~~sweetened beverages, at a rate of \$0.01 per fluid ounce and for the privilege of distributing concentrate in this state, either as concentrate or as sweetened beverages derived from that concentrate, at the rate of \$0.01 per fluid ounce—on bottled sweetened beverages and sweetened beverages distributed in this state, or at the rate of \$0.01 per fluid ounce of sweetened beverage to be produced from concentrate distributed in this state.~~ The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. This bill would exempt from the tax, among other things, the distribution in this state of bottled sweetened beverages, ~~sweetened~~

beverages, or concentrate made by a distributor to another distributor registered with the board and supported by an exemption certificate that consists of a statement signed under penalty of perjury.

By expanding the definition of the existing crime of perjury and by expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill imposes a state-mandated local program.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the Children’s Health Promotion Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Public Health and Superintendent of Public Instruction, as specified, for the purposes of statewide childhood obesity prevention activities and programs. This bill would also authorize the Director of the State Department of Public Health and the Superintendent of Public Instruction to make rules and regulations, and provide procedural measures, to bring into effect those purposes.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages, childhood obesity, and dental disease.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The prevalence of obesity in the United States has increased
- 4 dramatically over the past 30 years. From the 1960s to the late
- 5 1970s, prevalence was relatively constant, with about 15 percent

1 of the population classified as obese. After the 1970s, these rates
2 began to climb. By 2006, 23.3 percent of Americans were
3 considered obese. In California, obesity rates have increased even
4 more, rising from 8.9 percent in 1984 to 25.5 percent in 2010.
5 Although no group has escaped the epidemic, ethnic minorities
6 and the poor are disproportionately affected.

7 (b) The rate of children who are overweight has also increased
8 dramatically in recent decades. After being relatively constant
9 from the 1960s to the 1970s, the prevalence of overweight children
10 has more than quadrupled among children between 6 and 11 years
11 of age and nearly tripled among those between 12 and 19 years of
12 age.

13 (c) The obesity epidemic is of particular concern because obesity
14 increases the risk of diabetes, heart disease, certain types of cancer,
15 arthritis, asthma, and breathing problems. Depending on their level
16 of obesity, from 60 percent to over 80 percent of obese adults have
17 type 2 diabetes, high blood cholesterol, high blood pressure, or
18 other related conditions. It has been reported that up to 60 percent
19 of obese children 5 to 10 years of age have early signs of heart
20 disease.

21 (d) Type 2 diabetes, previously only seen among adults, is now
22 increasing among children. If the current obesity trends are not
23 reversed, it is predicted that one in three children and nearly
24 one-half of Latino and African American children born in the year
25 2000 will develop type 2 diabetes in their lifetime. Research shows
26 that overweight children have a much greater chance of being
27 obese as adults, with all the health risks that entails.

28 (e) Overweight and obesity account for \$147 billion in health
29 care costs nationally, or 9 percent of all medical spending – with
30 half these costs paid publicly through the Medicare and Medicaid
31 programs.

32 (f) In 2006, overweight and obesity-related costs in California
33 were estimated at almost \$21 billion.

34 (g) There is overwhelming evidence of the link between obesity
35 and consumption of sweetened beverages such as soft drinks,
36 energy drinks, sweet teas, and sports drinks. California adults who
37 drink a soda or more per day are 27 percent more likely to be
38 overweight or obese, regardless of income or ethnicity.

39 (h) According to nutritional experts, sweetened beverages such
40 as soft drinks, energy drinks, sweet teas, and sport drinks offer

1 little or no nutritional value, but massive quantities of added sugars.
2 For example, a 20-ounce bottle of soda contains the equivalent of
3 approximately 17 teaspoons of sugar. Yet, the American Heart
4 Association recommends that Americans consume no more than
5 five to nine teaspoons of sugar per day.

6 (i) Research shows that almost one-half of the extra calories
7 Americans have been consuming since the 1970s could come from
8 soda, with the average American drinking nearly 50 gallons of
9 sweetened beverages a year, the equivalent of 39 pounds of extra
10 sugar every year.

11 (j) Americans are drinking more sweetened beverages than ever
12 before. From 1977 to 2002, Americans doubled the amount of
13 sweetened beverages they consumed. Currently, children and adult
14 Americans consume 172 and 175 calories respectively from
15 sweetened beverages a day. Children and adolescents now consume
16 10 to 15 percent of their daily caloric intake from sweetened
17 beverages.

18 (k) Research shows that 41 percent of California children 2 to
19 11 years of age and 62 percent of California teens 12 to 17 years
20 of age drink soda daily, and for every additional serving of
21 sweetened beverage that a child consumes a day, the likelihood of
22 the child becoming obese increases by 60 percent.

23 (l) Dental caries (tooth decay) is the most common chronic
24 childhood disease, experienced by more than two-thirds of
25 California's children. Children who frequently or excessively
26 consume beverages high in sugar are at increased risk for dental
27 caries. Untreated dental caries can lead to pain, infection, tooth
28 loss, and in severe cases, even death. It can slow normal growth
29 and development by restricting nutritional intake. Children who
30 are missing teeth may have chewing problems that limit their food
31 choices and result in nutritionally inadequate diets.

32 (m) It is the intent of the Legislature, by adopting the Sweetened
33 Beverage Tax Law and creating the Children's Health Promotion
34 Fund, to diminish the human and economic costs of obesity and
35 dental disease in California. This act is intended to discourage
36 excessive consumption of sweetened beverages by increasing the
37 price of these products and by creating a dedicated revenue source
38 for health programs designed to prevent and treat childhood obesity
39 and dental disease and reduce the burden of attendant health
40 conditions.

1 SEC. 2. Part 14.5 (commencing with Section 32600) is added
2 to Division 2 of the Revenue and Taxation Code, to read:

3
4 PART 14.5. SWEETENED BEVERAGE TAX LAW

5
6 32600. This part shall be known and may be cited as the
7 Sweetened Beverage Tax Law.

8 32601. For purposes of this part:

9 (a) "Beverage container" means any closed or sealed container
10 regardless of size or shape, including, without limitation, those
11 made of glass, metal, paper, plastic, or any other material or
12 combination of materials.

13 (b) "Bottled sweetened beverage" means a sweetened beverage
14 contained in a beverage container.

15 (c) "*Beverage dispensing machine*" means a device which mixes
16 concentrate with any one or more other ingredients and dispenses
17 the resulting mixture into an open container as a ready-to-drink
18 beverage.

19 ~~(e)~~

20 (d) "Caloric sweetener" means any caloric substance suitable
21 for human consumption that humans perceive as sweet and
22 includes, without limitation, sucrose, fructose, including high
23 fructose corn sweetener, glucose, other sugars, and fruit juice
24 concentrates. "Caloric" means a substance that adds calories to
25 the diet of a person who consumes that substance.

26 ~~(e)~~

27 (e) "Concentrate" means a syrup, ~~simple syrup~~, powder, or base
28 product ~~containing caloric sweetener~~ that is used for mixing,
29 compounding, or making sweetened beverages *in a beverage*
30 *dispensing machine*. For purposes of this part, "concentrate" does
31 not include any of the following:

32 (1) Any product that is solely used in preparing coffee or tea.

33 (2) Any product for consumption by infants and which is
34 commonly referred to as "infant formula."

35 (3) Any product for use for weight reduction.

36 (4) Any product containing milk or milk products or plant
37 proteins sources.

38 (5) Any frozen concentrate or freeze-dried concentrate to which
39 only water is added to produce a sweetened beverage containing

1 more than 10 percent natural fruit juice or more than 10 percent
2 natural fruit juice.

3 (6) Any product that is sold and is intended to be used for the
4 purpose of an individual consumer mixing a sweetened beverage.

5 (7) Medical food.

6 (8) Any product to which no caloric sweeteners have been
7 added.

8 (e)

9 (f) “Consumer” means a person who purchases a bottled
10 sweetened beverage or concentrate for a purpose other than resale
11 in the ordinary course of business.

12 (f)

13 (g) “Distribution” includes:

14 ~~(1) The sale in this state of bottled sweetened beverages,~~
15 ~~sweetened beverages, or concentrate to a person who will make a~~
16 ~~subsequent retail sale.~~

17 ~~(2) The receipt in this state of untaxed bottled sweetened~~
18 ~~beverages, sweetened beverages, or concentrate by a retailer who~~
19 ~~will make a subsequent retail sale.~~

20 ~~(3) The sale in this state of untaxed bottled sweetened beverages,~~
21 ~~sweetened beverage, or concentrate by a retailer to a consumer.~~

22 ~~(4) The storage, use, or other consumption in this state of~~
23 ~~untaxed bottled sweetened beverages, sweetened beverages, or~~
24 ~~concentrate by a person.~~

25 *(1) The sale of bottled sweetened beverages or concentrate to*
26 *a retailer.*

27 *(2) The receipt of untaxed bottled sweetened beverages or*
28 *concentrate in this state from an unregistered out-of-state*
29 *distributor by a retailer.*

30 (g)

31 (h) “Distributor” means any person who makes a distribution
32 of bottled sweetened beverages, sweetened beverages, or
33 concentrate in the state, whether or not that person also sells these
34 products to consumers.

35 (h)

36 (i) “Medical food” means medical food as defined in Section
37 109971 of the Health and Safety Code.

38 (i)

39 (j) “Milk” means natural liquid milk, regardless of animal source
40 or butterfat content, natural milk concentrate, whether or not

1 reconstituted, regardless of animal source, plant source, or butterfat
2 content, or dehydrated natural milk, whether or not reconstituted
3 and regardless of animal source or butter fat content.

4 ~~(j)~~

5 (k) “Natural fruit juice” means the original liquid resulting from
6 the pressing of fruit, the liquid resulting from the reconstitution of
7 natural fruit juice concentrate, or the liquid resulting from the
8 restoration of water to dehydrated natural fruit juice.

9 ~~(k)~~

10 (l) “Natural vegetable juice” means the original liquid resulting
11 from the pressing of vegetables, the liquid resulting from the
12 reconstitution of natural vegetable juice concentrate, or the liquid
13 resulting from the restoration of water to dehydrated natural
14 vegetable juice.

15 ~~(l)~~

16 (m) “Nonalcoholic beverage” means any beverage not subject
17 to tax under Part 14 (commencing with Section 32001).

18 ~~(m)~~

19 (n) “Person” means an individual, trust, firm, joint stock
20 company, business concern, business trust, receiver, trustee,
21 syndicate, social club, fraternal organization, estate, corporation,
22 including, but not limited to, a government corporation, partnership,
23 limited liability company, and association or any other group or
24 combination acting as a unit. “Person” also includes any city,
25 county, city and county, district, commission, the state, or any
26 department, agency, or political subdivision thereof, any interstate
27 body, and the United States and its agencies and instrumentalities
28 to the extent permitted by law.

29 ~~(n)~~

30 (o) “Powder” or “base product” means a solid mixture of
31 ingredients used in making, mixing, or compounding sweetened
32 beverages by mixing the powder or base product with any one or
33 more other ingredients, including, without limitation, water, ice,
34 syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice,
35 or carbonation or other gas.

36 ~~(o)~~

37 (p) “Retail sale” means the sale of bottled sweetened beverages
38 or sweetened beverages to a consumer.

39 ~~(p)~~

1 (q) "Retailer" means any person who sells in this state bottled
2 sweetened beverages or sweetened beverages to a consumer,
3 whether or not that person is also a distributor as defined in this
4 section.

5 (q)
6 (r) "Sale" means the transfer of title or possession for
7 consideration in any manner or by any means whatever.

8 (r)
9 (s) "Simple syrup" means a mixture of sugar and water.

10 (s)
11 (t) (1) "Sweetened beverage" means any sweetened
12 nonalcoholic beverage sold for human consumption that contains
13 any added caloric sweeteners, including, but not limited to, the
14 following: soda water, ginger ale, root beer, all beverages
15 commonly referred to as cola, lime, lemon, lemon-lime, and other
16 flavored beverages, including any fruit or vegetable beverage
17 containing 10 percent or less natural fruit juice or natural vegetable
18 juice, and all other drinks and beverages commonly referred to as
19 "soda," "soda pop," and "soft drinks."

20 (2) "Sweetened beverage" does not include any of the following:

21 (A) Any product sold in liquid form for consumption by infants,
22 which is commonly referred to as "infant formula."

23 (B) Any product sold in liquid form for use for weight reduction.

24 (C) Water, to which no caloric sweeteners have been added.

25 (D) Any product containing milk or milk products or plant
26 protein sources.

27 (E) Medical food.

28 (F) Coffee or tea.

29 (t)

30 (u) "Syrup" means the liquid mixture of ingredients used in
31 making, mixing, or compounding sweetened beverages using one
32 or more other ingredients including, without limitation, water, ice,
33 a powder, simple syrup, fruits, vegetables, fruit juice, vegetable
34 juice, or carbonation or other gas.

35 32602. (a) There is hereby imposed an excise tax on every
36 distributor for the privilege of distributing bottled sweetened
37 beverages, ~~sweetened beverages~~, and concentrate in the state,
38 calculated as follows:

39 (t)

1 (a) The tax on bottled sweetened beverages ~~and sweetened~~
2 ~~beverages~~ distributed in this state shall be one cent (\$0.01) per
3 fluid ounce.

4 ~~(2)~~

5 (b) The tax on concentrate distributed in this state *either as*
6 *concentrate or as a sweetened beverage derived from that*
7 *concentrate*, shall be equal to one cent (\$0.01) per fluid ounce of
8 sweetened beverage ~~to be~~ produced from that concentrate. For
9 purposes of calculating the tax for concentrate, the volume of
10 sweetened beverage to be produced from concentrate shall be the
11 largest volume resulting from use of the concentrate according to
12 any manufacturer's instructions.

13 ~~(b) Every distributor subject to the tax imposed pursuant to~~
14 ~~subdivision (a) shall separately state the amount of tax due to the~~
15 ~~board by the distributor on the receipt, invoice, or other form of~~
16 ~~accounting of the transaction given to the retailer.~~

17 32603. Each distributor shall include the following information
18 on each receipt, invoice, or other form of accounting for the
19 distribution of bottled sweetened beverages, ~~sweetened beverages,~~
20 or concentrate:

21 (a) The name and address of the distributor.

22 (b) The name and address of the purchaser.

23 (c) The date of sale and invoice number.

24 (d) The kind, quantity, size, and capacity of packages of bottled
25 sweetened beverages, sweetened beverages, or concentrate sold.

26 (e) The amount of excise taxes due to the board from the
27 distributor on the sale of the bottled sweetened beverages;
28 ~~sweetened beverages,~~ or concentrate.

29 (f) Any other information as required by the board.

30 32604. There is exempt from the taxes imposed by this part
31 the distribution of bottled sweetened beverages, ~~sweetened~~
32 ~~beverages,~~ or concentrate distributed by a distributor to:

33 (a) A distributor registered with the board under this part when
34 supported by a properly completed exemption certificate.

35 (b) To a person when, pursuant to the contract of sale, the bottled
36 sweetened beverages, ~~sweetened beverages~~ or concentrates are
37 required to shipped and are shipped to a point outside of this state
38 by the distributor by means of any of the following:

39 (1) Facilities operated by the distributor.

1 (2) Delivery by the distributor to a carrier, customs broker, or
2 forwarding agent, whether hired by the purchaser or not, for
3 shipment to the out-of-state point.

4 (c) To a person where the state is prohibited from taxing that
5 sale, use, or consumption under the Constitution or laws of the
6 United States or under the Constitution of this state.

7 32605. The exemption certificate to be provided by a distributor
8 to another distributor as required by subdivision (a) of Section
9 32604 shall consist of a statement that is signed under penalty of
10 perjury by a person with authority to bind the distributor. The
11 certificate shall be dated and include the distributor's name and
12 account number. A new certificate shall be given if any information
13 in the current certificate changes. The certificate may be included
14 as part of any business records normally used to document a sale
15 or distribution.

16 32606. A distributor who has paid a tax, either directly to the
17 state or to another distributor registered under this part, and makes
18 a subsequent distribution of bottled sweetened beverages;
19 ~~sweetened beverages~~, or concentrate may claim a credit on its
20 return for the period in which the subsequent sale or distribution
21 occurs.

22 32607. The board shall administer and collect the tax imposed
23 by this part pursuant to the Fee Collection Procedures Law (Part
24 30 (commencing with Section 55001)). For purposes of this part,
25 the references in the Fee Collection Procedures Law to "fee" shall
26 include the tax imposed by this part and references to "feepayer"
27 shall include a person required to pay the tax imposed by this part.

28 ~~32608. The board may prescribe, adopt, and enforce any~~

29 *32608. (a) The board may prescribe, adopt, and enforce*
30 *regulations relating to the administration and enforcement of this*
31 *part, including, but not limited to, collections, reporting, refunds,*
32 *and appeals.*

33 *(b) The board may prescribe, adopt, and enforce any* emergency
34 regulations as necessary to implement this part. Any emergency
35 regulation prescribed, adopted, or enforced pursuant to this section
36 shall be adopted in accordance with Chapter 3.5 (commencing
37 with Section 11340) of Part 1 of Division 3 of Title 2 of the
38 Government Code, and, for purposes of that chapter, including
39 Section 11349.6 of the Government Code, the adoption of the
40 regulation is an emergency and shall be considered by the Office

1 of Administrative Law as necessary for the immediate preservation
2 of the public peace, health and safety, and general welfare.

3 32609. The taxes imposed by this part are due and payable to
4 the board quarterly on or before the last day of the month next
5 succeeding each quarterly period.

6 32610. (a) On or before the last day of the month following
7 each quarterly period of three months, a return for the preceding
8 quarterly period shall be filed *using electronic media* with the
9 board.

10 (b) The board may prescribe those forms and reporting
11 requirements as are necessary to implement the tax, including, but
12 not limited to, information regarding the total amount of bottled
13 sweetened beverages, ~~sweetened beverages~~, and concentrate sold
14 and the amount of tax due.

15 (c) *Returns shall be authenticated in a form or pursuant to*
16 *methods as may be prescribed by the board.*

17 32610.5. *Every person required to pay the tax imposed under*
18 *this part shall register with the board. Every application for*
19 *registration shall be made upon a form prescribed by the board*
20 *and shall set forth the name under which the applicant transacts*
21 *or intends to transact business, the location of his or her place or*
22 *places of business, and such other information as the board may*
23 *require. An application for an account shall be authenticated in*
24 *a form or pursuant to methods as may be prescribed by the board.*

25 32611. (a) There is hereby created a trust fund in the State
26 Treasury called the Children's Health Promotion Fund. The
27 Children's Health Promotion Fund shall consist of all taxes,
28 interest, penalties, and other amounts collected pursuant to this
29 part, less refunds and reimbursement to the board for expenses
30 incurred in the administration and collection of the tax.

31 (b) All moneys in the Children's Health Promotion Fund shall,
32 upon appropriation by the Legislature, be allocated for the purposes
33 of statewide childhood obesity prevention activities and programs
34 as follows:

35 (1) Twenty percent to the State Department of Public Health to
36 coordinate statewide childhood obesity prevention activities and
37 to fund state-level childhood obesity prevention and children's
38 dental programs. This funding shall support programs that use
39 educational, environmental, policy, and other public health
40 approaches that achieve the following goals: improve access to

1 and consumption of healthy, safe, and affordable foods and
2 beverages; reduce access to and consumption of calorie-dense,
3 nutrient-poor foods; encourage physical activity; decrease sedentary
4 behavior; and raise awareness about the importance of nutrition
5 and physical activity to childhood obesity prevention.

6 (2) Thirty-five percent for community-based childhood obesity
7 prevention programs. This funding shall support programs that
8 use educational, environmental, policy, and other public health
9 approaches that achieve the following goals: improve access to
10 and consumption of healthy, safe, and affordable foods and
11 beverages; reduce access to and consumption of calorie-dense,
12 nutrient-poor foods; encourage physical activity; decrease sedentary
13 behavior; and raise awareness about the importance of nutrition
14 and physical activity to childhood obesity prevention. The State
15 Department of Public Health shall be responsible for the
16 distribution of these funds to community-based organizations and
17 to local health departments, with priority given to counties that
18 have established childhood obesity prevention coalitions to build
19 political support for programs.

20 (3) Ten percent to evidence-based prevention, early recognition,
21 monitoring, and weight management intervention activities in the
22 medical setting. The State Department of Public Health shall be
23 responsible for identifying activities and allocating these funds.

24 (4) Thirty-five percent to elementary and secondary schools for
25 educational, environmental, policy and other public health
26 approaches that promote nutrition and physical activity. The
27 approaches funded pursuant to this paragraph can include
28 improving or building school recreational facilities that are used
29 for recess and physical education; providing continuing education
30 training for physical education teachers; hiring qualified physical
31 education teachers; implementing Safe Routes to Schools
32 programs; improving the quality and nutrition of school breakfasts,
33 lunches, and snacks; ensuring free, clean drinking water access
34 throughout the schoolday; and incorporating practical nutrition
35 education into the curriculum. The Superintendent of Public
36 Instruction is responsible for the allocation and distribution of
37 these funds.

38 (c) All moneys in the Children's Health Promotion Fund shall
39 be expended only for the purposes expressed in this chapter, and
40 shall be used only to supplement existing levels of service and not

1 to supplant current federal, state, or local funding for existing levels
2 of service.

3 (d) The Director of the State Department of Public Health and
4 the Superintendent of Public Instruction are hereby authorized to
5 make such rules and regulations, and provide such procedural
6 measures, as shall bring into effect the purposes of this section.
7 The rules and regulations may provide for specific programs to be
8 funded consistent with the allocation of funds set forth above.

9 *32612. This part shall become operative on July 1, 2012.*

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.