Introduced by Representatives Till of Jericho, Representatives Clarkson of Woodstock, French of Randolph, Kitzmiller of Montpelier, Miller of Shaftsbury, Mitchell of Barnard, Mrowicki of Putney, O’Bien of Richmond, Poirier of Barre City, Shand of Weathersfield, Spengler of Colchester, Waite-Simpson of Essex and Webb of Shelburne

Referred to Committee on 

Date: 

Subject: Taxation; excise; sugar-sweetened beverages 

Statement of purpose: This bill proposes to impose an excise tax on sugar-sweetened beverages. 

An act relating to the imposition of an excise tax on sugar-sweetened beverages 

It is hereby enacted by the General Assembly of the State of Vermont: 

Sec. 1. FINDINGS 

The general assembly finds: 

(1) According to the beverage industry, in 2008, Americans consumed 14.2 billion gallons of carbonated soft drinks, or an average of over 46 gallons per person per year. The Rudd Center for Food Policy & Obesity at Yale
University estimates annual adult consumption in Vermont to be 72.2 gallons of soft drinks and fruit drinks, including 48.8 gallons of sugar-sweetened beverages.

(2) "Refreshment beverages" account for 5.5 percent–9 percent of daily calorie intake. This figure is based on average consumption across the entire U.S. population, even though there are many people who drink no or few sugar-sweetened beverages, which means that per capita consumption of calories from sugar-sweetened beverages is even higher among those who drink them regularly.

(3) Consumption of sugar-sweetened beverages has doubled since 1977 in the United States and has also increased in many areas internationally. As sugar-sweetened beverage consumption has increased, it has replaced consumption of other beverages, particularly milk and fruit juice, in the diet of children and adolescents.

(4) According to a recent USDA analysis of CDC data, “caloric sweetened sodas” and fruit drinks are major sources of added sugars in the United States, contributing an average of 10.58 teaspoons of added sugars daily; for children, the figure is 11.96 teaspoons.

(5) Soft drink consumption is the single greatest contributor to the intake of total added sweeteners, making up 37.1 percent and 40.7 percent, respectively, among female and male adolescents.
(6) According to a study of schoolchildren conducted during 1995–1997, the risk of obesity increased one to six times with each additional daily serving of sugar-sweetened beverage.

(7) Replacing sugar-sweetened beverages with noncaloric drinks significantly reduced body mass index (BMI) among adolescents with a higher starting BMI; for each additional sugar-sweetened beverage serving, both BMI and frequency of obesity increased after adjustment for anthropometric, demographic, dietary, and lifestyle variables.

(8) By way of explaining their contribution to obesity, sugar-sweetened beverages, unlike sugar-sweetened foods, do not seem to promote a feeling of satiety, which would prevent individuals from compensating for the calories ingested from sugar-sweetened beverages during later meals. This dynamic leads to a higher caloric intake overall, by an average of 172 calories in children and 175 calories in adults each day.

(9) The Centers for Disease Control and Prevention has summed up the situation as follows: In the area of consuming sugar-sweetened drinks, evidence is growing to suggest an association with weight gain in children and adolescents. Consuming sugar-sweetened drinks may be associated with obesity because these drinks are high in calories. Children may not compensate at meals for the calories they have consumed in sugar-sweetened
drinks, although this may vary by age. Also, liquid forms of energy may be
less satiating than solid forms and lead to higher caloric intake.

(10) According to an analysis of 88 studies, there are “clear
associations” between soft drink intake and energy intake and body weight,
with larger effect sizes linked to stronger research methods and smaller effect
sizes appearing in studies funded by the beverage industry.

(11) Substantial consumption of sugar-sweetened beverages is believed
to have other long-term health effects as well. There is a strong body of
evidence that sugar-sweetened beverages are a cause of type 2 diabetes.

Sec. 2. 32 V.S.A. chapter 227 is added to read:

CHAPTER 227. SUGAR-SWEETENED BEVERAGE TAX

§ 9401. DEFINITIONS

As used in this chapter:

(1) “Catamount fund” means the Catamount fund established pursuant
to 33 V.S.A. § 1986.

(2) “Commissioner” means the commissioner of the department of taxes
and his or her authorized agents and employees.

(3) “Consumer” means a person who purchases or otherwise obtains a
sugar-sweetened beverage for consumption and not for sale to another.

(4) “Department” means the Vermont department of taxes.
(5) “Distributor” means any person, including manufacturers and
wholesale dealers, who receives, stores, manufactures, bottles, or distributes
syrup, powder, or sugar-sweetened beverages for sale to retailers doing
business in the state whether or not that person also sells such products to
consumers. “Distributor” also means any person importing or causing to be
imported syrup, powder, or sugar-sweetened beverages, into the state from
outside the state for sale to a retailer or consumer.

(6) “Place of business” means any place where syrup, powder, or
sugar-sweetened beverages are manufactured or received for sale in the state.

(7) “Powder” means any solid mixture of ingredients used in making,
mixing, or compounding sugar-sweetened beverages by mixing the powder
with any one or more other ingredients, including water, ice, syrup, simple
syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or other gas.

(8) “Sale” means the transfer of title or possession for valuable
consideration regardless of the manner by which the transfer is completed.

(9) “Sugar-sweetened beverage” means any nonalcoholic beverage,
carbonated or noncarbonated, which is intended for human consumption and
contains any added sweetener. As used in this definition, “nonalcoholic
beverage” means any beverage that contains less than one-half of one percent
alcohol per volume. However, the term “sugar-sweetened beverage” does
not include:
(A) Beverages consisting of 100 percent natural fruit or vegetable juice with no added sweetener. For purposes of this subdivision (9), “natural fruit juice” and “natural vegetable juice” mean the original liquid resulting from the pressing of fruits or vegetables, or the liquid resulting from the dilution of dehydrated natural fruit juice or natural vegetable juice;

(B) Milk, with or without any added sweetener, which means natural liquid milk regardless of animal source or butterfat content; natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content; or soy, rice, or similar milk substitutes;

(C) Infant formula.

(10) “Sweetener” means any caloric substance suitable for human consumption that humans perceive as sweet and includes sucrose, fructose, glucose, other sugars, or fruit juice concentrates, but does not include any substance that adds less than five calories per reference amount customarily consumed or per labeled serving.

(11) “Syrup” means a liquid mixture of ingredients used in making, mixing, or compounding sugar-sweetened beverages using one or more other ingredients, such as water, ice, powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.
§ 9402. TAX IMPOSED

(a) There is imposed an excise tax on every distributor of $0.01 per ounce upon sugar-sweetened beverages sold in the state.

(b) There is imposed on every distributor an excise tax of $0.01 per ounce of syrup and powder sold in the state. For purposes of calculating the tax under this subsection, the taxable volume of syrup or powder shall be equal to the largest volume of sugar-sweetened beverage resulting from use of the syrup or powder according to the manufacturer’s instructions.

§ 9403. RETURNS AND REMITTANCES

(a) Any distributor liable for the tax imposed by this chapter shall, on or before the 15th day of every month, return to the commissioner under oath of a person with legal authority to bind the distributor a statement containing its name and place of business, the quantity of syrup, powder, or sugar-sweetened beverages subject to the excise tax imposed by this chapter sold in the preceding month, and any other information required by the commissioner, along with the tax due.

(b) There is established a special fund pursuant to subchapter 5 of chapter 7 of Title 32 comprising one-third of the revenue from the tax imposed by this chapter together with any additions or interest accruing to the fund. The fund shall be called the “Vermont healthy weight initiative fund.” The commissioner of finance and management may draw warrants for
disbursements from this fund in anticipation of receipts. The monies in the
fund shall be available for the general assembly to appropriate in accordance
with subsection (c) of this section. Any remaining balance at the end of the
fiscal year shall be carried forward in the fund.

(c) One-third of the revenue from the tax imposed by this chapter shall be
deposited in the Catamount fund.

(d) One-third of the revenue from the tax imposed by this chapter shall be
used to fund the credit in 32 V.S.A. § 9413 and the administration of this
chapter.

(e) The funds in the Vermont healthy weight initiative fund may only be
used to:

(1) subsidize the purchase of fruits and vegetables by WIC and
3SquaresVT recipients;

(2) establish a revolving loan fund to facilitate the purchase of energy
efficient refrigeration equipment for the sale of fruits and vegetables by small
food retailers;

(3) provide electronic benefits transfer terminals to all Vermont farmers’
markets as well as technical assistance, promotional support, and
reimbursement to farmers’ markets for transaction costs;

(4) subsidize school meals for low income Vermonters; and
(5) create a permanent and self-sustaining fund to support programs combating obesity to be administered by a board comprising representatives from the agency of human services, the department of education, and the agency of agriculture, food and markets.

§ 9404. RECORDS

Every distributor shall maintain for not less than three years accurate records, showing all transactions subject to tax liability under this chapter. Distributors must identify the amount of tax collected as a separate invoice entry on sales to retailers. Such records are subject to inspection by the commissioner at all reasonable times during normal business hours.

§ 9405. EXEMPTIONS

The following shall be exempt from the tax imposed by section 9402 of this chapter:

(1) Syrup, powder, or sugar-sweetened beverages sold to the United States government, its subdivisions, or under any other circumstances where the state is without power to impose the tax;

(2) Syrup, powder, or sugar-sweetened beverages sold by a distributor for resale or consumption outside the state; and

(3) Syrup, powder, or sugar-sweetened beverages sold by a distributor to another distributor and not intended for resale to a consumer if the purchasing
§ 9406. LICENSE REQUIRED

Each distributor shall secure a license from the commissioner of taxes before engaging in the business of selling sugar-sweetened beverages in the state.

§ 9407. APPLICATION FOR AND ISSUANCE OF LICENSE

(a) A separate application and license is required for each wholesale outlet when a distributor owns or controls more than one such outlet.

(b) Licenses shall be issued by the commissioner on application without charge, on forms prescribed by the commissioner, stating the name and address of the applicant, the address of the place of business, the type of business, and any other information as the commissioner may require for the proper administration of this chapter.

§ 9408. TERM OF LICENSES

Each license issued under the provisions of this chapter shall be valid as long as the licensee continues to do business at the place named, unless the license is revoked or suspended by the commissioner as provided in section 9409 of this chapter. If the business is sold or transferred, or if the licensee ceases to do business at the place named, the license shall immediately be returned to the commissioner for cancellation.
§ 9409. REVOCATION AND SUSPENSION OF LICENSES

The commissioner may revoke or suspend the license of any licensee for failure to comply with any provision of this chapter, or for failure to comply with the provisions of chapter 15 of Title 11.

§ 9410. PENALTIES

(a) Any person subject to the provisions of this chapter who fails to pay the tax imposed by this chapter by the date that payment is due or fails to submit a return as required by this chapter is subject to the provisions of section 3202 of this title.

(b) Any person subject to the provisions of this chapter who sells or offers for sale any syrup, powder, or sugar-sweetened beverages in the state without holding a license as required by this chapter is liable for a penalty of up to $100.00 for each day such sales are made or offered.

§ 9411. APPEALS

Any person aggrieved by an action taken by the commissioner under this chapter may appeal in writing to the commissioner for a review. The commissioner shall then grant a hearing subject to the provisions of chapter 25 of Title 3 and notify the aggrieved person in writing of his or her determination. The commissioner’s determination may be appealed within 30 days to the superior court of the county of this state in which the taxpayer resides or has a place of business, or the superior court of Washington County.
§ 9412. BONDING

When the commissioner, in his or her discretion, deems it necessary to protect the revenues to be obtained under this chapter, he or she may require any licensee to file with him or her a bond under the terms of section 3114 of this title.

§ 9413. RETAILER CREDIT

There shall be available a refundable credit against the tax imposed by section 5822 or 5832 of this title for any retailer who certifies that he or she has maintained the retail price differential created by this tax between sugar-sweetened beverages and other beverages. The credit shall be in an amount of one-quarter cent per ounce of sugar-sweetened beverage sold in the taxable year. The department of taxes shall develop forms and procedures for claiming this credit.

Sec. 3. MONITORING

The department of health shall develop criteria and components for an independent evaluation to assess the impact that the sugar-sweetened beverage tax has on consumption of products affected by the implementation of the tax. Specifically, the evaluation shall seek to determine the impact of these exclusions on consumer purchasing and health outcomes. The amount of $100,000.00 is appropriated to the department of health for this purpose.
Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2011.