

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3044**

BY DELEGATES LONGSTRETH (BY REQUEST), BATES,

FLEISCHAUER, LANE, MILLER, R., BALDWIN, BYRD,

HAMILTON AND HORNBUCKLE

[Introduced March 14, 2017; Referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-19-1 and §11-19-2 of the Code of West Virginia, 1931, as  
 2 amended, all relating to the tax on soft drinks; increasing the tax; modifying what drinks  
 3 are covered by the tax; and providing an effective date.

*Be it enacted by the Legislature of West Virginia:*

1 That §11-19-1 and §11-19-2 of the Code of West Virginia, 1931, as amended, be amended  
 2 and reenacted, all to read as follows:

**ARTICLE 19. SOFT DRINKS TAX.**

**§11-19-1. Definitions.**

1 As used in this article:

2 (1) "Bottled soft drinks" shall include any and all nonalcoholic beverages, whether  
 3 carbonated or not, ~~such as soda water, ginger ale, coca cola, lime cola, pepsi cola, doctor pepper,~~  
 4 ~~root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated~~  
 5 ~~water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft~~  
 6 ~~drinks" of whatever kind~~ which are intended for human consumption and contain any added  
 7 caloric sweetener which are intended for human consumption and contain any added caloric  
 8 sweetener, which are closed and sealed in glass, paper, or any other type of container, envelope,  
 9 package or bottle, whether manufactured with or without the use of any syrup. The term "bottled  
 10 soft drinks" shall not include beverages sweetened solely with noncaloric sweeteners; water,  
 11 carbonated or not, to which no caloric sweetener has been added; fluid milk to which no flavoring  
 12 has been added, or natural undiluted fruit juice or vegetable juice.

13 (2) "Natural undiluted fruit juice" shall mean the original liquid resulting from the pressing  
 14 of fruit ~~with or without sweetener being added~~, or the liquid resulting from the reconstitution of  
 15 natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice. ~~with or~~  
 16 ~~without sweetener being added~~

17 (3) "Natural undiluted vegetable juice" shall mean the original liquid resulting from the  
 18 pressing of vegetables ~~with or without sweetener being added~~ or the liquid resulting from the

19 reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated  
20 natural vegetable juice. ~~with or without sweetener being added~~

21 (4) "Sweetener" ~~shall~~ means sugar only, artificial or natural, which singularly flavors the  
22 taste of a natural undiluted fruit juice or natural undiluted vegetable juice.

23 (5) "Soft drink syrups and powders" ~~shall~~ includes the compound mixture or the basic  
24 ingredients, whether dry or liquid, practically and commercially usable in making, mixing or  
25 compounding soft drinks by the mixing thereof with one or more other ingredients, including  
26 without limitation, carbonated or plain water, ice, fruit, milk or any other product suitable to make  
27 a soft drink, ~~among such syrups being such products as coca cola syrup, chero cola syrup, peps~~  
28 ~~cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup,~~  
29 ~~chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder,~~  
30 ~~malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing~~  
31 soft drinks commercially at soda fountains, restaurants or similar places as well as those syrups  
32 and powder bases prepared for the purpose of domestically mixing soft drinks ~~such as kool-aid,~~  
33 ~~oh boy drink, tip top, miracle aid and all other similar products.~~

34 (6) ~~"Simple syrup" shall mean the making, mixing, compounding or manufacturing, by~~  
35 ~~dissolving sugar and water or any other mixtures that will create simple syrup to which may or~~  
36 ~~may not be added concentrates or extracts.~~

37 (7) (6) "Person" ~~shall~~ means and include an individual, firm, partnership, association or  
38 corporation, or any other legal entity.

39 (8) (7) "Wholesale dealer" includes only those persons who sell any bottled soft drink or  
40 soft drink syrup to retail dealers for the purpose of resale.

41 (9) (8) "Retail dealer" includes every person other than a wholesale dealer ~~mixing, making,~~  
42 ~~compounding or manufacturing~~ who sells or otherwise dispenses bottle soft drinks, or mixes,  
43 makes, compounds, or manufactures any drink from a soft drink syrup or powder base, or a  
44 person selling such syrup or powder.

45 ~~(10)~~ (9) "Distributor" shall mean any person who receives, stores, manufactures, bottles,  
 46 produces, distributes, purchases or both distributes and purchases for sale to retail dealers any  
 47 bottled soft drink or soft drink syrup or powder, whether or not that person also sells such products  
 48 to consumers.

49 ~~(11)~~ (10) "Commissioner" means the State Tax Commissioner, and where the meaning of  
 50 the context requires, all deputies and employees duly authorized by him or her.

**§11-19-2. Excise tax on bottled soft drinks, syrups and ~~dry mixtures~~ powders; disposition thereof.**

1 (a) For the purpose of providing revenue for the construction, maintenance and operation  
 2 of a four-year school of medicine, dentistry and nursing ~~of~~ in West Virginia University, an excise  
 3 tax is hereby levied and imposed ~~on and after midnight of June 30, 1951,~~ upon the sale, use,  
 4 handling or distribution of all bottled soft drinks and all soft drink syrups and powders, whether  
 5 manufactured within or without this state. ~~as follows:~~

6 ~~(1) On each bottled soft drink, a tax of 1¢ on each sixteen and nine-tenths fluid ounces, or~~  
 7 ~~fraction thereof, or on each one-half liter, or fraction thereof contained therein.~~

8 ~~(2) On each gallon of soft drink syrup, a tax of 80¢, and in like ratio on each part gallon~~  
 9 ~~thereof, or on each four liters of soft drink syrup a tax of 84¢, and in like ratio on each part four~~  
 10 ~~liters thereof.~~

11 ~~(3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks,~~  
 12 ~~a tax of 1¢ or on each 28.35 grams, or fraction thereof, a tax of 1¢~~

13 (b) Effective July 1, 2017, bottled soft drinks and soft drink syrups and powders shall be  
 14 taxed as follows:

15 (1) Bottled soft drinks shall be taxed at a rate of 1¢ per fluid ounce.

16 (2) Soft drink syrups and powders shall be taxed at a rate of 1¢ per ounce of soft drink  
 17 produced from that syrup or powder. For purposes of calculating the tax, the volume of soft drink  
 18 produced from syrups or powders shall be the larger of:

19            (A) The largest volume resulting from use of the syrups or powders per any manufacturer’s  
20 instructions; or

21            (B) The volume actually produced by the retail dealer, as reasonably determined by the  
22 commissioner.

23            (c) Any person manufacturing or producing within this state any bottled soft drink or soft  
24 drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any  
25 other person who is the original consignee of any bottled soft drink or soft drink syrup  
26 manufactured or produced outside this state, or who brings such drinks or syrups into this state,  
27 ~~shall be~~ is liable for the excise tax hereby imposed. The excise tax hereby imposed ~~shall~~ may not  
28 be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured,  
29 sold, used or distributed in this state.

30            (d) All ~~The first \$15 million of the~~ revenue collected by the commissioner under the  
31 provisions of this article, less such costs of administration as are hereinafter provided for, shall be  
32 paid by him or her into a special medical school fund, which is hereby created in the State  
33 Treasury, to be used solely for the construction, maintenance and operation of a four-year school  
34 of medicine, dentistry and nursing, as otherwise provided by law and the remainder of the revenue  
35 collected shall be deposited in the General Revenue Fund of the state.

NOTE: The purpose of this bill is to change the structure of the tax on bottled soft drinks and soft drink syrups and powders to only cover soft drinks with added caloric sweeteners, increase the rate to one cent per ounce and directing the excess proceeds into the state General Revenue Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.