

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

# House Bill 2649

**FISCAL  
NOTE**

BY DELEGATE HORNBUCKLE

[Introduced February 23, 2021; 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; modifying the tax to only cover sugary  
 3 drinks; modifying the tax to two cents per ounce; redistributing the revenue generated to  
 4 all three medical schools in the state; and providing for an effective date.

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

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

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

16 (3) "Natural undiluted vegetable juice" shall mean the original liquid resulting from the  
 17 pressing of vegetables ~~with or without sweetener being added~~ or the liquid resulting from the  
 18 reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated  
 19 natural vegetable juice. ~~with or without sweetener being added~~

20 (4) “Caloric sweetener” shall mean any caloric substance suitable for human consumption  
21 that humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, or  
22 other sugars. “Caloric sweetener” excludes noncaloric sweeteners. For purposes of this definition,  
23 “caloric” means a substance which adds calories to the diet of a person who consumes that  
24 substance. ~~sugar only, artificial or natural, which singularly flavors the taste of a natural undiluted~~  
25 ~~fruit juice or natural undiluted vegetable juice~~

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

37 ~~(6) “Simple syrup” shall mean the making, mixing, compounding or manufacturing, by~~  
38 ~~dissolving sugar and water or any other mixtures that will create simple syrup to which~~  
39 ~~may or may not be added concentrates or extracts~~

40 ~~(7) (6) “Person” shall mean and include an individual, firm, partnership, association, or~~  
41 ~~corporation.,~~ or any other legal entity.

42 ~~(8) (7) “Wholesale dealer” includes only those persons who sell any bottled soft drink or~~  
43 ~~soft drink syrup to retail dealers for the purpose of resale.~~

44 ~~(9) (8) “Retail dealer” includes every person other than a wholesale dealer~~ who sells or  
45 otherwise dispenses bottle soft drinks, or mixes, makes, compounds, or manufactures ~~mixing,~~

46 ~~making, compounding or manufacturing~~ any drink from a soft drink syrup or powder base, or a  
47 person selling such syrup or powder.

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

51 ~~(11)~~ (10) "Commissioner" means the State Tax Commissioner, and where the meaning of  
52 the context requires, all deputies and employees duly authorized by him.

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

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

7 (b) Effective July 1, 2021, bottled soft drinks and soft drink syrups and powders will be  
8 taxed as follows:

- 9 (1) Bottled soft drinks shall be taxed at a rate of two cents per fluid ounce.
- 10 (2) Soft drink syrups and powders shall be taxed at a rate of two cents per ounce of soft  
11 drink produced from that syrup or powder. For purposes of calculating the tax, the volume of soft  
12 drink produced from syrups or powders shall be the larger of:

13 (A) The largest volume resulting from use of the syrups or powders per any manufacturer's  
14 instructions, or

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

17 ~~(1) On each bottled soft drink, a tax of one cent on each sixteen and nine-tenths fluid~~

18 ~~ounces, or fraction thereof, or on each one-half liter, or fraction thereof contained therein.~~

19 (2) On each gallon of soft drink syrup, a tax of eighty cents, and in like ratio on each part  
20 ~~gallon thereof, or on each four liters of soft drink syrup a tax of eighty-four cents, and in like ratio~~  
21 ~~on each part four liters thereof.~~

22 ~~(3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks,~~  
23 ~~a tax of one cent or on each 28.35 grams, or fraction thereof, a tax of one cent~~

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

31 (D) All revenue collected by the commissioner under the provisions of this article, less  
32 such costs of administration as are hereinafter provided for, shall be paid by him into a special  
33 medical school fund, which is hereby created in the State Treasury, to be disbursed as follows:  
34 ~~used solely for the construction, maintenance and operation of a four-year school of medicine,~~  
35 ~~dentistry and nursing, as otherwise provided by law~~

36 (i) The first \$18 million collected shall be for the continued use of a four-year school of  
37 medicine, dentistry and nursing at West Virginia University;

38 (ii) From the remaining revenue, \$5 million shall be for the use of the school of medicine  
39 at Marshall University; and

40 (iii) From any remaining revenue, \$3 million shall be for the use of the West Virginia School  
41 of Osteopathic Medicine.

42 (iv) Any excess proceeds up to \$55 million shall be directed by supplemental appropriation  
43 for teachers' pay raises and annually distributed in accordance with §18A-4-5c of this code; and

- 44 the remainder of any revenue collected shall be deposited in the General Revenue Fund of the  
45 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 two cents per ounce, and to rededicate the proceeds to all three medical schools in the state.

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