

By: Farias

H.B. No. 735

A BILL TO BE ENTITLED

AN ACT

relating to imposing a tax on certain sweetened beverages and ingredients used to make certain sweetened beverages and to the use of certain revenue for the promotion of children's health programs; providing penalties.

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

SECTION 1. Subtitle E, Title 2, Tax Code, is amended by adding Chapter 165 to read as follows:

CHAPTER 165. TAX ON SWEETENED BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 165.001. DEFINITIONS. In this chapter:

(1) "Retailer" means a person, other than a manufacturer, distributor, or wholesaler, who receives, stores, mixes, compounds, or manufactures sweetened beverages and who sells or otherwise distributes sweetened beverages to the ultimate consumer.

(2) "Sweetened beverage" means a carbonated or non-carbonated nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include:

(A) a beverage that:

(i) is sweetened only by a sweetener that does not add calories to the beverage;

(ii) is 100 percent vegetable or fruit juice by volume;

1                    (iii) contains more than one-half of one  
2 percent alcohol per ounce;

3                    (iv) is commonly referred to as a "sports  
4 drink" or "electrolyte replacement drink" and contains not more  
5 than 110 milligrams of potassium and 200 milligrams of sodium per  
6 eight-ounce serving;

7                    (v) is intended by the manufacturer for  
8 consumption by an infant and is commonly referred to as "infant  
9 formula"; or

10                   (vi) is intended by the manufacturer to be  
11 sold and used by the ultimate consumer in domestically mixing soft  
12 drinks;

13                   (B) milk or milk products that do not contain  
14 sweeteners that add calories to the milk or milk products;

15                   (C) non-carbonated water or water without any  
16 additional substances except for minerals and flavoring agents that  
17 do not add calories to the water; or

18                   (D) coffee or tea that does not contain  
19 sweeteners that add calories to the coffee or tea.

20                   (3) "Sweetened beverage powder" means a solid mixture  
21 of basic ingredients used to make, mix, or compound sweetened  
22 beverages.

23                   (4) "Sweetened beverage syrup" means a liquid mixture  
24 of basic ingredients used to make, mix, or compound sweetened  
25 beverages.

26                   SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

27                   Sec. 165.051. TAX IMPOSED ON SWEETENED BEVERAGES. (a) A

1 tax is imposed on the sale to a retailer of a sweetened beverage.

2 (b) A tax is imposed on the importation into this state of a  
3 sweetened beverage for sale to the ultimate consumer.

4 (c) Except as provided by Subsection (d), the rate of the  
5 tax imposed by this section is five cents for each 12-ounce  
6 increment or fractional part of that increment of sweetened  
7 beverage.

8 (d) On January 1 of each year, the comptroller shall  
9 increase the rate of the tax prescribed by Subsection (c) or in  
10 effect the preceding year, whichever is greater, by a percentage  
11 equal to the percentage increase in the most recent annual revised  
12 Consumer Price Index for All Urban Consumers, as published by the  
13 federal Bureau of Labor Statistics of the United States Department  
14 of Labor.

15 Sec. 165.052. TAX IMPOSED ON SWEETENED BEVERAGE POWDER.

16 (a) A tax is imposed on the sale to a retailer of sweetened beverage  
17 powder.

18 (b) A tax is imposed on the importation into this state of  
19 sweetened beverage powder for sale to the ultimate consumer.

20 (c) Except as provided by Subsection (d), the rate of the  
21 tax imposed by this section is five cents for the greater of:

22 (1) each 12-ounce increment or fractional part of that  
23 increment of sweetened beverage that may be produced from the  
24 powder by following the manufacturer's directions; or

25 (2) each 12-ounce increment or fractional part of that  
26 increment of sweetened beverage actually produced by the retailer,  
27 as determined by the comptroller.

1        (d) On January 1 of each year, the comptroller shall  
2 increase the rate of the tax prescribed by Subsection (c) or in  
3 effect the preceding year, whichever is greater, by a percentage  
4 equal to the percentage increase in the most recent annual revised  
5 Consumer Price Index for All Urban Consumers, as published by the  
6 federal Bureau of Labor Statistics of the United States Department  
7 of Labor.

8        Sec. 165.053. TAX IMPOSED ON SWEETENED BEVERAGE SYRUP. (a)  
9 A tax is imposed on the sale to a retailer of sweetened beverage  
10 syrup in this state.

11        (b) A tax is imposed on the importation into this state of  
12 sweetened beverage syrup for sale to the ultimate consumer.

13        (c) Except as provided by Subsection (d), the rate of the  
14 tax imposed by this section is five cents for the greater of:

15                (1) each 12-ounce increment or fractional part of that  
16 increment of sweetened beverage that may be produced from the syrup  
17 by following the manufacturer's directions; or

18                (2) each 12-ounce increment or fractional part of that  
19 increment of sweetened beverage actually produced by the retailer,  
20 as determined by the comptroller.

21        (d) On January 1 of each year, the comptroller shall  
22 increase the rate of the tax prescribed by Subsection (c) or in  
23 effect the preceding year, whichever is greater, by a percentage  
24 equal to the percentage increase in the most recent annual revised  
25 Consumer Price Index for All Urban Consumers, as published by the  
26 federal Bureau of Labor Statistics of the United States Department  
27 of Labor.

1       Sec. 165.054. EXEMPTION FROM TAX. The tax imposed by this  
2 chapter does not apply to:

3               (1) sweetened beverages that:

4                       (A) the comptroller determines are unsalable; or

5                       (B) this state is prohibited from taxing under  
6 federal law; or

7               (2) a sale of sweetened beverages, sweetened beverage  
8 powder, or sweetened beverage syrup that occurs after a sale that is  
9 taxed under this chapter.

10       Sec. 165.055. IMPACT OF TAX. The ultimate consumer or user  
11 in this state bears the impact of the tax imposed by this chapter.  
12 If another person pays the tax, the amount of the tax is added to the  
13 price to the ultimate consumer or user.

14       Sec. 165.056. PAYMENT OF TAX. (a) The manufacturer,  
15 distributor, wholesaler, or other person selling sweetened  
16 beverages, sweetened beverage syrup, or sweetened beverage powder  
17 in this state to a retailer or importing sweetened beverages,  
18 sweetened beverage syrup, or sweetened beverage powder for sale in  
19 this state to the ultimate consumer shall pay the tax imposed by  
20 this chapter.

21               (b) On or before the 25th day of each month, the person  
22 responsible for paying the tax shall send to the comptroller the  
23 amount of tax due under this chapter for the preceding month.

24       Sec. 165.057. REPORTS. On or before the 25th day of each  
25 month, the person responsible for paying the tax under this chapter  
26 shall file with the comptroller a report stating:

27               (1) the volume of sweetened beverages, sweetened

beverage powder, and sweetened beverage syrup sold in this state to  
retailers;

(2) the volume of sweetened beverages, sweetened  
beverage powder, and sweetened beverage syrup imported into this  
state for sale in this state to the ultimate consumer; and

(3) any other information required by the comptroller.

Sec. 165.058. RECORDS. (a) The person responsible for  
paying the tax under this chapter shall keep a complete record of:

(1) the volume of sweetened beverages, sweetened  
beverage powder, and sweetened beverage syrup sold in this state to  
retailers;

(2) the volume of sweetened beverages, sweetened  
beverage powder, and sweetened beverage syrup imported into this  
state for sale in this state to the ultimate consumer; and

(3) any other information required by the comptroller.

(b) A record required by this section must be kept or  
maintained for at least two years after the date the record is made.

#### SUBCHAPTER C. SALES PERMITS

Sec. 165.101. SALES PERMITS. (a) The comptroller shall  
issue to an applicant who qualifies under Section 165.102 a  
separate permit for each place of business in this state.

(b) The holder of a permit shall display it conspicuously in  
the place of business to which it applies.

(c) A permit is valid only for the person and the place of  
business to which it applies and is non-assignable.

(d) A permit issued under this chapter must be renewed  
annually.

1       Sec. 165.102. APPLICATION FOR PERMIT. (a) A person  
2 desiring to sell to a retailer in this state, or import for sale to  
3 the ultimate consumer in this state, sweetened beverages, sweetened  
4 beverage powder, or sweetened beverage syrup shall file with the  
5 comptroller an application for a permit for each place of business.

6       (b) The application must:

- 7               (1) be on a form prescribed by the comptroller;  
8               (2) state the name under which the applicant transacts  
9 or intends to transact business;  
10              (3) give the address of the place of business to which  
11 the permit is to apply;  
12              (4) contain any other information required by the  
13 comptroller; and  
14              (5) be signed by the applicant or a person authorized  
15 to act on behalf of the applicant.

16                   SUBCHAPTER D. PENALTIES AND OFFENSES

17       Sec. 165.151. INTEREST ON DELINQUENT TAX. A tax imposed by  
18 this chapter that is delinquent draws interest as provided by  
19 Section 111.060.

20       Sec. 165.152. PENALTY. (a) A person who is responsible for  
21 paying the tax imposed by this chapter and who fails to file a  
22 report as required by this chapter or does not pay the tax when it is  
23 due forfeits to the state a penalty of 50 percent of the amount of  
24 the delinquent tax.

25               (b) The minimum penalty under this section is \$1.

26       Sec. 165.153. CRIMINAL PENALTY. (a) A person who violates  
27 this chapter commits an offense.

1        (b) An offense under this section is a Class C misdemeanor.

2                    SUBCHAPTER E. DISPOSITION OF REVENUE

3        Sec. 165.201. ALLOCATION OF REVENUE. The revenue from the  
4 tax imposed by this chapter shall be deposited as follows:

5                    (1) 40 percent to the credit of the children's health  
6 promotion account established under Subchapter F; and

7                    (2) the remainder to the credit of the general revenue  
8 fund.

9                    SUBCHAPTER F. CHILDREN'S HEALTH PROMOTION ACCOUNT

10        Sec. 165.251. ACCOUNT. (a) The children's health  
11 promotion account is a separate account in the general revenue  
12 fund.

13        (b) The account consists of:

14                    (1) certain revenue from the tax imposed under this  
15 chapter;

16                    (2) any gifts or grants received for the purposes of  
17 this subchapter; and

18                    (3) interest earned on money in the account.

19        (c) The account is exempt from the application of Section  
20 403.095, Government Code.

21        Sec. 165.252. USE OF ACCOUNT. (a) Money in the account may  
22 be appropriated only as follows:

23                    (1) 80 percent to the Texas Education Agency for the  
24 purposes authorized by Subsection (b); and

25                    (2) 20 percent to the Department of State Health  
26 Services for the purposes authorized by Subsection (c).

27        (b) Money appropriated to the Texas Education Agency under



this section may be used only to:

(1) implement and maintain coordinated school health programs, which may include enhancements to the basic school health program; or

(2) improve the school health environment through activities, which may include:

(A) improving or building recreational facilities used for physical education and related activities at public elementary and secondary schools;

(B) providing continuing education training for physical education teachers;

(C) hiring qualified physical education teachers;

(D) implementing Safe Routes to Schools programs;

(E) improving the quality and nutrition of foods served at public elementary and secondary schools;

(F) ensuring, at no cost, access to clean drinking water throughout the school day; and

(G) incorporating nutrition and health into the standard educational curriculum.

(c) Money appropriated to the Department of State Health Services under this section may be used only to fund training and technical assistance for the implementation and maintenance of coordinated school health programs in public elementary and secondary schools.

(d) Money appropriated under this section may be used only

1 to supplement and not to supplant current federal, state, and local  
2 funding for children's health programs in public elementary and  
3 secondary schools.

4       SECTION 2. Chapter 165, Tax Code, as added by this Act,  
5 applies to a sweetened beverage, sweetened beverage powder, or  
6 sweetened beverage syrup sold or imported on or after the effective  
7 date of this Act. A sweetened beverage, sweetened beverage powder,  
8 or sweetened beverage syrup sold or imported before that date is  
9 governed by the law in effect when the sweetened beverage,  
10 sweetened beverage powder, or sweetened beverage syrup was sold or  
11 imported, and that law is continued in effect for that purpose.

12       SECTION 3. This Act takes effect September 1, 2013.