A BILL FOR AN ACT

RELATING TO OBESITY PREVENTION.

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

SECTION 1. In Hawaii, childhood obesity increased by thirty-eight per cent between 1999 and 2009, and adult obesity has more than doubled between 1996 and 2011. As a result of health risks and complications related to obesity, this generation of children may be the first generation not to outlive their parents. Obesity-related medical expenditures in Hawaii were calculated to be over $470,000,000 in 2009, and are continuing to increase. Sugar-sweetened beverages have been identified by many scientific studies as a major contributor to the costly obesity epidemic.

A 2004 study found that sugared soft drinks are the single largest contributor of calorie intake in the United States. According to nutritional standards, sugar-sweetened beverages such as non-diet soft drinks, energy drinks, sweet teas, and sports drinks offer little or no nutritional value and contain massive quantities of added sugars and calories. For example, a twelve-ounce can of soda contains the equivalent of approximately eight to ten teaspoons of sugar. The American
Heart Association recently released a scientific statement recommending that a person eating a 2,200-calorie diet should eat no more than nine teaspoons of refined sugar in a day. Sugar-sweetened beverages account for almost half the total added-sugar intake in the United States population and sweetened beverages displace healthier and more nutrient-dense beverages like milk, one hundred per cent fruit juice, and water.

Refined sugars are one of several important factors that promote tooth decay, also known as dental caries. Sugar-sweetened beverages promote caries because they bathe the teeth of frequent consumers in sugar water for long periods of time during the day. An analysis of data from 1971 to 1974 found a strong association between the frequency of between-meal consumption of soda and dental caries. A recent study found that young children who drank carbonated sugar-sweetened beverages had almost double the risk of dental caries.

Americans are drinking more sugar-sweetened beverages than ever before. From 1977 to 2002, Americans doubled the amount of sugar-sweetened beverages they consumed. Currently, children and adults consume an average of 172 and 175 calories respectively from sugar-sweetened beverages a day. Children and adolescents now consume ten to thirteen per cent of their daily
caloric intake from sugar-sweetened beverages. There is also a strong correlation between weight gain and soda consumption. In children, each additional twelve ounce soft drink consumed per day increases their likelihood of becoming obese by sixty per cent. A 2009 California study found that adults who drink one or more sodas a day are twenty-seven per cent more likely to be overweight or obese than those who do not drink soda.

The Division of Physical Activity, Nutrition and Obesity at the Centers for Disease Control and Prevention recommends decreasing the consumption of sugar-sweetened beverages as one of six evidence-based strategies for preventing and reducing overweight and obesity. The 2010 Dietary Guidelines for Americans also recommends reducing the intake of sugar-sweetened beverages as a method to control calorie intake and manage body weight.

A fee on sugar-sweetened beverages could have both fiscal and health impacts. Economic disincentives are among the most effective tools to change behavior as tobacco taxes have demonstrated. Hawaii's tobacco taxes have helped to drive the State's smoking rates to historic lows. Smoking among high school students decreased sixty-four per cent from 1999 to 2011. Price has been shown to influence food purchasing behavior as...
well. Based on the best estimates to date of the responsiveness
of demand for soft drinks to changes in price, a ten per cent
fee could result in about an eight per cent reduction in
consumption. A more recent modeling study predicted a twenty-
four per cent decrease in consumption in response to a twenty
per cent increase in price, which corresponds to the penny-per-
ounce tax proposed in many states. The effects could be higher
for heavy consumers of soft drinks.

The revenues from such a fee would provide a dedicated
source of funding in Hawaii to accelerate the progress in
promoting health and obesity prevention, particularly amongst
children. In order to counteract marketing and environmental
cues that lead to unhealthy behaviors that impact the health of
Hawaii's children, it is important to provide access to programs
and services that promote a healthy lifestyle and good
beginnings.

Traditional models of attempting to deal with rising
obesity rates have focused on secondary prevention methods and
have not proven to be successful. Primary prevention methods
such as policy changes, including the development of programs
that help make nutritious foods more affordable and accessible,
provide safe and healthy places for people to engage in physical
activity, and assist children in having a healthy start, are necessary. A substantial and sustained response is needed to create cultural and societal changes so healthy choices and lifestyles are the norm in Hawaii. Providing a dedicated source of funding for these programs is vital to their success.

The purpose of this Act is to discourage excessive consumption of sugar-sweetened beverages and prevent obesity by, among other things:

(1) Establishing a fee on sugar-sweetened beverages sold in the State; and

(2) Designating the fees to be used for the coordination of obesity prevention programs by the department of health.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . SUGAR-SWEETENED BEVERAGES FEE

§321-A Definitions. As used in this part, unless the context otherwise requires:

"Bottle" means any closed or sealed container regardless of size or shape, including those made of glass, metal, paper, plastic, or any other material or combination of materials.
"Bottled sugar-sweetened beverage" means any sugar-sweetened beverage contained in a bottle that is ready for consumption without further processing, such as dilution or carbonation.

"Caloric sweetener" means any caloric substance suitable for human consumption that humans perceive as sweet, including sucrose, fructose, glucose, other sugars, and fruit juice concentrates. "Caloric sweetener" does not include non-caloric sweeteners. For purposes of this definition, "caloric" means a substance that adds calories to the diet of a person who consumes that substance.

"Consumer" means a person who purchases a sugar-sweetened beverage for consumption and not for sale to another.

"Department" means the department of health.

"Director" means the director of health.

"Distributor" means any person, including manufacturers and wholesale dealers, who receives, stores, manufactures, bottles, or distributes bottled sugar-sweetened beverages, syrup, or powder for sale to retailers doing business in the State whether or not that person also sells such products to consumers.

"Fund" means the obesity prevention special fund established pursuant to section 321-F.
"Non-caloric sweetener" means any non-caloric substance suitable for human consumption that humans perceive as sweet, including aspartame, saccharin, stevia, and sucralose. "Non-caloric sweetener" does not include caloric sweeteners. For purposes of this definition, "non-caloric" means a substance that contains fewer than five calories per serving.

"Place of business" means any place where sugar-sweetened beverages, syrups, or powder are manufactured or received for sale in the State.

"Powder" means any solid mixture of ingredients that contains caloric sweetener, which is used in making, mixing, or compounding sugar-sweetened beverages by combining 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.

"Retailer" means any person who sells or otherwise dispenses in the State a sugar-sweetened beverage to a consumer whether or not that person is also a distributor as defined in this section.

"Sale" means the transfer of title or possession for valuable consideration regardless of the manner by which the transfer is completed.
"Sugar-sweetened beverage" means any nonalcoholic beverage, carbonated or noncarbonated, that is intended for human consumption and contains any added caloric sweetener. As used in this definition, "nonalcoholic beverage" means any beverage that contains less than one-half of one per cent alcohol per volume. "Sugar-sweetened beverage" does not include:

1. Beverages consisting of one hundred per cent natural fruit juice or natural vegetable juice with no added caloric sweetener. For purposes of this paragraph, "natural fruit juice" or "natural vegetable juice" means the original liquid resulting from the pressing of fruits or vegetables, respectively, or the liquid resulting from the dilution of dehydrated natural fruit juice or natural vegetable juice, respectively;

2. Milk without any added caloric sweetener. For purposes of this paragraph "milk" 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; soy milk; or rice milk;
(3) Dietary aids. For purposes of this paragraph "dietary aids" means liquid products manufactured for use as:

(A) An oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages;

(B) A source of necessary nutrition used due to a medical condition; or

(C) An oral electrolyte solution for infants and children formulated to prevent dehydration due to illness;

(4) Infant formula; and

(5) Beverages containing less than 4.2 grams of added caloric sweetener per 8 ounces of beverage.

"Syrup" means a liquid mixture of ingredients that contains caloric sweetener, which is used in making, mixing, or compounding sugar-sweetened beverages by combining the syrup with one or more other ingredients, including water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or other gas.

§321-B Registration. Every distributor, and any person intending to become a distributor, shall register as such with
the department on forms to be prescribed, prepared, and
furnished by the department.

$321-C Fee imposed. (a) Every distributor selling sugar-
sweetened beverages in the State shall pay a fee that is hereby
imposed at the following rates:

(1) $1.28 per gallon of bottled sugar-sweetened beverages
sold or offered for sale to a retailer for sale in the
State to a consumer; and

(2) $1.28 per gallon of sugar-sweetened beverage produced
from syrup or powder sold or offered for sale to a
retailer for sale in the State to a consumer, either
as syrup or powder or as a sugar-sweetened beverage
derived from that syrup or powder. The volume of
sugar-sweetened beverage produced from syrup or powder
shall be the largest volume resulting from use of the
syrup or powder according to the manufacturer's
instructions.

(b) Any retailer that sells bottled sugar-sweetened
beverages, syrup, or powder in the State to a consumer, on which
the fee imposed by this section has not been paid by a
distributor, shall be liable for the fee imposed in subsection
(a) at the time of sale to the consumer.
(c) A distributor shall add the amount of fees levied by this section to the price of sugar-sweetened beverages sold to a retailer, and the retailer shall pass the amount of the fee through to a consumer as a component of the final retail purchase price. The amount of the fees shall be stated separately on all invoices, signs, sales or delivery slips, bills, and statements that advertise or indicate the price of such beverages.

§321-D Exemptions. The following shall be exempt from the fee imposed by this part:

(1) Bottled sugar-sweetened beverages, syrups, and powder sold by a distributor or a retailer expressly for resale or consumption outside the State; and

(2) Bottled sugar-sweetened beverages, syrups, and powder sold by a distributor to another distributor, if the sales invoice clearly indicates that the sale is exempt. If the sale is to a person who is both a distributor and a retailer, the sale shall also be exempt from the fee and the fee shall be paid when the purchasing distributor who is also a retailer resells the product to a retailer or a consumer. This
§321-E Payment. Every distributor, on or before the fifteenth day of each month, shall file with the department a form identifying all sales of sugar-sweetened beverages made during the preceding month. The form shall be prescribed by the department and shall contain such information as it may deem necessary for the proper administration of the sugar-sweetened beverages fee.

§321-F Establishment of the obesity and chronic disease prevention special fund. (a) There is established in the state treasury the obesity and chronic disease prevention special fund to be administered by the department, into which shall be deposited sugar-sweetened beverages fees, interest payments, and penalty payments, imposed pursuant to this part and as distributed in section 321-Q.

(b) All moneys in the fund shall be used for:

(1) All costs to implement this part, including:

(A) Administrative, audit, independent evaluation, and compliance activities associated with collection and payment of the deposits of the sugar-sweetened beverages fee program;
(B) Personnel to implement the sugar-sweetened beverages fee program, including registration and enforcement activities; and

(C) Associated office expenses;

(2) Coordination and support of evidence-based statewide obesity and chronic disease prevention programs by the department or other state agencies, including programs relating to diabetes, cardiovascular disease, promotion of healthy lifestyles, physical fitness, nutrition, early childhood health, and other prevention-oriented public health programs. This funding shall support population-based programs that use educational, environmental, policy, and other public health approaches to achieve the following goals:

(A) Reduce racial, ethnic, and socioeconomic disparities in obesity rates;

(B) Improve access to and consumption of healthy, safe, and affordable foods;

(C) Reduce access to and consumption of calorie-dense nutrient-poor foods;

(D) Encourage physical activity;
(E) Decrease sedentary behavior; and

(F) Raise awareness about the importance of nutrition and physical activity to obesity prevention;

(3) Support of non-school hour programs that support opportunities for physical activity and nutrition education;

(4) Support of prenatal surveillance and assessment, home visitation, early childhood oral health prevention, and coordination for families, infants, and children at highest health and domestic violence risk. These programs shall screen, coordinate, enroll, or refer families prenatally or at birth to resources to meet their needs to achieve good beginnings through a holistic approach;

(5) Support of health promotion from birth to childhood to provide a systems approach that will ensure children and families have healthy lifestyles and wellness; and

(6) $250,000 per year to be allocated each federally qualified community health center for preventative clinical services directly related to obesity-related chronic disease.
§321-G  **Records to be kept.**  (a) Every distributor and retailer shall keep a record of all sales of sugar-sweetened beverages made by the distributor or retailer in such form as the department may prescribe.

(b) The records as required in subsection (a) shall be made available, upon request, for inspection by the department; provided that any proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person, except:

1. As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this part or any rule adopted to implement this part; or
2. Pursuant to an order issued by a court or administrative agency hearings officer.

§321-H  **Audit authority.**  The director, or the duly authorized agent of the director, may examine all records required to be kept under this part and books, papers, and records of any person engaged in the sale of sugar-sweetened beverages to verify the accuracy of the payment of the fee imposed by this part and other compliance with this part and rules adopted pursuant thereto. Every person in possession of such books, papers, and records and the person's agents and
employees shall give the director, or the duly authorized agent of the director, the means, facilities, and opportunities for the examination.

§321-I Contract for administrative services. The department may contract the services of a third party to administer the sugar-sweetened beverages fee program under this part.

§321-J Management and financial audit. The auditor shall conduct a management and financial audit of the program for the first two fiscal years the program is in effect following the implementation of rules, and for each fiscal year thereafter ending in an even number year. The auditor shall submit the audit report to the legislature and the department no later than twenty days prior to the convening of the next regular session. The costs incurred by the auditor for the audit shall be reimbursed by the fund.

§321-K Administration by director; rules. The administration and enforcement of this part are vested in the director, who shall adopt rules in accordance with chapter 91 for the enforcement and administration of this part.

§321-L Criminal penalties. Any person subject to the provisions of this part who fails to pay the entire fee imposed
by this part by the date that payment is due, fails to register
as a distributor, fails to submit a form, or fails to maintain
records as required by this part, or violates any other
provision of this part shall be guilty of a misdemeanor.

§321-M Civil penalties. Any person subject to the
provisions of this part who fails to pay the entire fee imposed
by part by the date that payment is due, fails to register as a
distributor, fails to submit a form, or fails to maintain
records required by this part, or violates any other provision
of this part shall be liable for the amount of the fee that is
due and a penalty equal to fifty per cent of the fee due. The
director, or the director's duly authorized representative, may
determine the amount of the fee and the penalty due in the event
of any nonpayment or underpayment and demand payment of all
sugar-sweetened beverage fees and penalties. Interest shall
accrue on nonpayment or underpayment of the fee at a rate of
eight per cent per year from the date the fee was due until
paid.

§321-N Unpaid fees and debt. All fees and penalties
imposed under the provisions of this part remaining due and
unpaid shall constitute a debt to the State and may be collected
from the person owing same by suit or otherwise.
§321-0 Enforcement. (a) If the director determines that the sugar-sweetened beverage fee, penalties, or interest are due and owing, the director shall notify the person of the amount due and owing by certified mail.

(b) Any notice issued under subsection (a) shall become final, unless not later than thirty days after the notice is mailed, the person named therein requests in writing a hearing before the director. Whenever a hearing is requested, the amount owed shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the fee, interest, and penalty in whole or in part. Upon request for a hearing, the director shall require the requestor to appear before the director for a hearing at the time and place specified in the notice.

(c) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that all or a portion of the fee, interest, or penalty is due, the director shall take appropriate collection activity.

(d) If the amount of any fee, interest, or penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the
name of the State to collect the fee, interest, and penalty. In any proceeding to collect the fee, interest, or penalty imposed, the director need show only that:

(1) Notice was given;
(2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
(3) The fee, interest, or penalty was imposed; and
(4) The fee, interest, or penalty remains unpaid.

(e) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

§321-P Appeal. Any person aggrieved as set forth in section 91-14 may appeal the determination of the director to the appropriate court having jurisdiction over the matter.

§321-Q Distribution of revenues. One hundred per cent of revenues collected from the sugar-sweetened beverages fee, interest payments, and penalty payments imposed pursuant to this part shall be paid to the obesity prevention special fund, established in section 321-F.

§321-R Evaluation. The department shall develop criteria and components for an independent evaluation to assess the
impact of the fee imposed by this part on consumption of
products subject to the fee established by this part. The
evaluation shall seek to determine the impact of the fee on
sugar-sweetened beverage prices, consumer purchasing behavior,
and health outcomes. The reasonable costs of evaluation shall
be considered an implementation cost of this part.

§321-S Annual reports. The department shall provide
annual reports on the sugar-sweetened beverages fee program to
the legislature and the governor no later than twenty days prior
to the convening of each regular session for the period
beginning when the program is in effect following the
implementation of rules. The reports shall contain but not be
limited to describing:

(1) Performance indicators;
(2) Measures of effectiveness;
(3) Organization charts; and
(4) Position descriptions of every type of position
created and salaries paid to each employee.

If the administration of the program is contracted to a third
party pursuant to section 321-I, a copy of the contract shall be
 appended to the next applicable report, and the contractor shall
abide by these reporting requirements as well. The contractor's
pay scales shall be comparable to equivalent civil service
positions."

SECTION 3. Chapter 321, Hawaii Revised Statutes, is
amended by adding a new section to be appropriately designated
and to read as follows:

"§321- Hawaii interagency obesity prevention council; established. (a) There is established within the department of
health for administrative purposes the Hawaii interagency
obesity prevention council, which shall be an advisory board
exempt from section 26-34.

(b) The Hawaii interagency obesity prevention council
shall be responsible for:

(1) Formulating and advising the governor on the
implementation of a unified ten-year state obesity
prevention strategic plan to address child and adult
obesity in Hawaii;

(2) Promoting collaboration among public agencies and
private stakeholders to lower obesity rates in the
State;

(3) Monitoring the progress of the state obesity
prevention strategic plan;"
Providing recommendations to state agencies, the legislature, and the private sector on improving the quality, availability, and coordination of obesity prevention policies and activities;

Developing specific strategies to address social determinants of health as they relate to obesity prevention; and

Activating, coordinating, and maintaining responsive action among the public, business, and educational communities to become part of an obesity prevention strategy.

The state obesity prevention strategic plan formulated pursuant to subsection (b) shall be in writing and shall be a public document.

The council shall consist of at least the following members or each member's designee:

1. The director of health, who shall serve as chair;
2. The director of human services;
3. The superintendent of education;
4. A representative from the University of Hawaii John A. Burns School of Medicine;
(5) One member of the house of representatives to be designated by the speaker of the house of representatives;

(6) One member of the senate to be designated by the president of the senate; and

(7) One member designated by the governor.

Additional members may be added as determined by the Hawaii interagency obesity prevention council.

(e) Members of the Hawaii interagency obesity prevention council shall be appointed or designated, as applicable, without regard to section 26-34.

(f) Members of the Hawaii interagency obesity prevention council shall serve without compensation.

(g) The Hawaii interagency obesity prevention council shall meet quarterly or more frequently as it deems necessary. A majority of the members of the Hawaii interagency obesity prevention council shall constitute a quorum to do business and to validate any decision or act of the council."

SECTION 4. There is appropriated out of the obesity and chronic disease prevention special fund established by this Act the sum of $ or so much thereof as may be necessary for fiscal year 2013-2014 and the same sum or so much thereof as
may be necessary for fiscal year 2014-2015 for the department of health to support child and adult obesity and chronic disease prevention programs, including but not limited to programs relating to diabetes, cardiovascular disease, promotion of healthy lifestyles, physical fitness, nutrition, early childhood health, and other prevention-oriented public health programs.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. In codifying the new sections added to chapter 321, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designations of, and references to, the new sections in this Act.

SECTION 6. New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall take effect on July 1, 2014, except that the fees established by section 321-C, Hawaii Revised Statutes, shall be imposed upon the adoption of administrative rules pursuant to section 321-K, Hawaii Revised Statutes, for the enforcement and administration of the new part of chapter 321, Hawaii Revised Statutes, established by this Act.
Report Title:
Obesity Prevention; Sugar-Sweetened Beverage Fee; Hawaii Interagency Obesity Prevention Council; Obesity and Chronic Disease Prevention Special Fund; Appropriation

Description:
Imposes a fee on sugar-sweetened beverages. Establishes the obesity and chronic disease prevention special fund and the Hawaii interagency obesity prevention council to support obesity prevention programs. Makes an appropriation from the obesity and chronic disease prevention special fund to the department of health. (SD1)

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