

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4344**

BY DELEGATES LANE, E. EVANS, LONGSTRETH AND ROWE

[Introduced January 29, 2018; Referred  
to the Committee on Health and Human Resources  
then 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 on soft drinks to apply to  
 3 sodas containing sugar sweeteners; increasing the tax to 2 cents per ounce on certain  
 4 sodas; redistributing revenue to include funding for the Public Employees Insurance  
 5 Agency and certain schools at West Virginia University; modifying definitions; and defining  
 6 new terms.

*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 ~~(4)~~ “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, Dr. 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 sugars, which  
 7 are closed and sealed in glass, paper, or any other type of container, envelope, package, or bottle,  
 8 whether manufactured with or without the use of any syrup. The term “bottled soft drinks” shall  
 9 not include beverages sweetened solely with noncaloric sweeteners; water, carbonated or not,  
 10 fluid milk, to which no flavoring has been added; regardless of animal or plant source, or butterfat  
 11 content, or natural undiluted fruit juice or vegetable juice.

12 ~~(44)~~ “Commissioner” means the State Tax Commissioner, and where the meaning of the  
 13 context requires, all deputies and employees duly authorized by him or her.

14 ~~(40)~~ “Distributor” shall mean any person who receives, stores, manufactures, bottles,  
 15 produces, distributes, and/or purchases for sale to retail dealers any bottled soft drink or soft drink  
 16 syrup or powder, whether or not that person also sells such products to consumers.

17           (2) “Natural undiluted fruit juice” shall mean the original liquid resulting from the pressing  
18 of fruit ~~with or without sweetener being added~~, or the liquid resulting from the reconstitution of  
19 natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice. ~~with or~~  
20 without sweetener being added.

21           (3) “Natural undiluted vegetable juice” shall mean the original liquid resulting from the  
22 pressing of vegetables ~~with or without sweetener being added~~ or the liquid resulting from the  
23 reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated  
24 natural vegetable juice ~~with or without sweetener being added~~.

25           (4) “Sweetener” shall mean ~~sugar only, artificial or natural, which singularly flavors the~~  
26 ~~taste of a natural undiluted fruit juice or natural undiluted vegetable juice.~~

27           “Nonnutritive Sweetener” shall mean any nonnutritive substance suitable for human  
28 consumption that humans perceive as sweet and includes, without limitation, aspartame,  
29 acesulfame-K, neotame, saccharin, sucralose, stevia, and other artificial sweeteners, and that  
30 contains fewer than five calories per serving. Nonnutritive sweetener does not include sugar. For  
31 purposes of this definition, “nonnutritive” means a substance that contains fewer than five calories  
32 per eight ounce serving.

33           (7) “Person” shall mean and include an individual, firm, partnership, association, or  
34 corporation, or any other legal entity.

35           (9) “Retail dealer” includes every person other than a wholesale dealer who sells or  
36 otherwise dispenses bottled soft drinks, or mixes, makes, compounds, or manufactures ~~mixing,~~  
37 ~~making, compounding or manufacturing~~ any drink from a soft drink syrup or powder base, or a  
38 person selling such syrup or powder.

39           (5) “Soft drink syrups and powders” shall include the compound mixture or the basic  
40 ingredients, whether dry or liquid, practically and commercially usable in making, mixing, or  
41 compounding soft drinks by the mixing thereof with one or more other ingredients, including  
42 without limitation, carbonated or plain water, ice, fruit, milk, or any other product suitable to make

43 a soft drink, ~~among such syrups being such products as coca cola syrup, chero cola syrup, pepsi~~  
 44 ~~cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup,~~  
 45 ~~chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder,~~  
 46 ~~malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing~~  
 47 soft drinks commercially at soda fountains, restaurants, or similar places as well as those syrups  
 48 and powder bases prepared for the purpose of domestically mixing soft drinks. ~~such as kool-aid,~~  
 49 ~~oh boy drink, tip top, miracle aid and all other similar products~~

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

53 "Sugars" shall mean any monosaccharide or disaccharide nutritive sweetener such as  
 54 glucose, fructose, lactose, and sucrose. Examples include, without limitation, cane sugar, beet  
 55 sugar, high-fructose corn syrup, honey, fruit juice concentrate, and other nutritive sweeteners. For  
 56 purposes of this definition, "nutritive" means a substance that contains five or more calories per  
 57 eight ounce serving.

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

**§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 West Virginia University, an excise tax  
 3 is hereby levied and imposed on and after midnight of the last day of June, one thousand nine  
 4 hundred fiftyone, upon the sale, use, handling, or distribution of all bottled soft drinks and all soft  
 5 drink syrups and powders, whether 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) Bottled soft drinks and soft drink syrups and powders are taxed as follows:

14           (1) Bottled soft drinks containing less than 10 grams of sugars per eight fluid ounces shall  
15 not be taxed;

16           (2) Bottled soft drinks containing 10 grams of sugars to 20 grams of sugars per eight fluid  
17 ounces shall be taxed at 1 cent per ounce;

18           (3) Bottled soft drinks containing more than 20 grams of sugar per eight fluid ounces shall  
19 be taxed at 2 cents per ounce; and

20           (4) Soft drink syrups and powders shall be taxed at a rate consistent with subdivisions (1),  
21 (2) and (3) of this subsection based on the amount of sugars in the soft drink produced from that  
22 syrup or powder. For purposes of calculating the tax, the volume of soft drink produced from  
23 syrups or powders shall be the larger of:

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

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

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

34 sold, used, or distributed in this state.

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

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

42 (2) The remaining revenue shall be deposited into the Public Employees Insurance  
43 Agency Stability Fund and expended pursuant to §11B-2-32 of this code.

NOTE: The purpose of this bill is to modify the tax on soft drinks to apply to sodas containing sugar sweeteners. The bill increases the tax to 2 cents per ounce on certain sodas. The bill redistributes revenue to include funding for the Public Employees Insurance Agency and certain schools at West Virginia University. The bill modifies definitions. The bill defines new terms. The bill also rearranges the definitions so that they are in alphabetical order.

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