
HOUSE BILL No. 1170

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8-12; IC 6-8.1-1-1; IC 20-34-5.

Synopsis: Minimally nutritious food and beverage tax. Imposes an 11.5% tax, in addition to other applicable taxes, on the retail sale of minimally nutritious foods or beverages. Establishes the physical fitness grant account (account), and deposits revenues from the tax in the account. Establishes the physical fitness grant program. Provides that the department of education shall award grants to public high schools, including charter high schools, for salaries and other costs related to physical activity and fitness education from money appropriated from the account. Provides that the surplus of the account reverts to the state general fund to be used for Medicaid expenditures.

Effective: January 1, 2007.

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January 9, 2006, read first time and referred to Committee on Public Health.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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HOUSE BILL No. 1170



A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2007]:

4 **Chapter 12. Minimally Nutritious Food and Beverage Tax**

5 **Sec. 1. As used in this chapter, "department" refers to the**
6 **department of state revenue.**

7 **Sec. 2. As used in this chapter, "gross retail income" has the**
8 **meaning set forth in IC 6-2.5-1-5.**

9 **Sec. 3. (a) As used in this chapter, "minimally nutritious food or**
10 **beverage" means the following:**

- 11 (1) **A food that lists sugar, in any form, as the first ingredient.**
- 12 (2) **A beverage that lists sugar, in any form, as the second**
- 13 **ingredient, including beverages commonly referred to as soft**
- 14 **drinks, soda, soda pop, cola, lemon, lime, or lemon-lime,**
- 15 **whether sold in a bottle or a can or from a fountain.**
- 16 (3) **A food that derives more than thirty-five percent (35%) of**
- 17 **the food's total weight from sugar, other than sugar in the**



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form of fresh or dried fruits, berries, or vegetables.

(b) The term does not include:

(1) milk; or

(2) fruit drinks composed of at least fifty percent (50%) fruit juice.

Sec. 4. "Retail merchant" has the meaning set forth in IC 6-2.5-1-8.

Sec. 5. (a) An excise tax known as the minimally nutritious food and beverage excise tax is imposed on each sale of a minimally nutritious food or beverage by a retail merchant in Indiana.

(b) The tax is imposed on a retail merchant at the time of each transaction described in subsection (a) and is payable according to the procedures set forth in section 7 of this chapter.

(c) The tax imposed under this section does not apply to furnishing, preparing, or serving any food or beverage in a transaction that is exempt or to the extent the transaction is exempt from the state gross retail tax imposed under IC 6-2.5.

Sec. 6. The tax imposed on a transaction described in section 5 of this chapter is eleven and five-tenths percent (11.5%) of the gross retail income received by the retail merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 7. The tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return that is filed for the payment of the tax may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax as prescribed by the department.

Sec. 8. The tax imposed under this chapter is a listed tax for the purposes of IC 6-8.1.

Sec. 9. Revenue from the tax shall be deposited in the physical fitness grant account established by IC 20-34-5-4.

SECTION 2. IC 6-8.1-1-1, AS AMENDED BY P.L.214-2005, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 1. "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the river boat admissions tax (IC 4-33-12); the river boat wagering tax (IC 4-33-13); the gross income tax (IC 6-2.1) (repealed); the utility receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5); the adjusted

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1 gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8)
 2 (repealed); the county adjusted gross income tax (IC 6-3.5-1.1); the
 3 county option income tax (IC 6-3.5-6); the county economic
 4 development income tax (IC 6-3.5-7); the municipal option income tax
 5 (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the financial
 6 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative
 7 fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor
 8 carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a
 9 reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax
 10 (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the
 11 hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1);
 12 the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the
 13 wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5);
 14 the malt excise tax (IC 7.1-4-5); the petroleum severance tax
 15 (IC 6-8-1); **the minimally nutritious food and beverage excise tax**
 16 **(IC 6-8-12)**; the various innkeeper's taxes (IC 6-9); the various food
 17 and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and
 18 IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and
 19 hazardous chemical inventory form fee (IC 6-6-10); the penalties
 20 assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and
 21 penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the
 22 underground storage tank fee (IC 13-23); the solid waste management
 23 fee (IC 13-20-22); and any other tax or fee that the department is
 24 required to collect or administer.

25 SECTION 3. IC 20-34-5 IS ADDED TO THE INDIANA CODE AS
 26 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 27 JANUARY 1, 2007]:

28 **Chapter 5. Physical Fitness Grant Program and Account**

29 **Sec. 1. As used in this chapter, "account" refers to the physical**
 30 **fitness grant account established by section 4 of this chapter.**

31 **Sec. 2. As used in this chapter, "program" refers to the physical**
 32 **fitness grant program established by section 5 of this chapter.**

33 **Sec. 3. For purposes of this chapter, the term "public high**
 34 **school" includes a charter high school established under**
 35 **IC 20-24-3.**

36 **Sec. 4. (a) The physical fitness grant account is established**
 37 **within the state general fund to fund physical fitness grants from**
 38 **the department to public high schools.**

39 **(b) The department shall administer the account.**

40 **(c) The account consists of the following:**

41 **(1) Minimally nutritious food and beverage tax revenue**
 42 **deposited under IC 6-8-12-9.**

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(2) Any other money deposited in the account.

(d) The expenses of administering the account shall be paid from money in the account.

(e) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(f) There is annually appropriated from the account to the department an amount sufficient to carry out the purposes of this chapter.

(g) Money in the account at the end of a state fiscal year reverts to the state general fund to be used for Medicaid expenditures.

Sec. 5. The physical fitness grant program is established to provide grants to public high schools to provide physical activity and physical fitness education for students during the school day at least five (5) days a week.

Sec. 6. (a) The department shall administer the program under this chapter.

(b) The department shall award a grant to each public high school. The department shall determine the amount of each grant.

(c) The department shall consider the following when awarding grants under this chapter:

- (1) The public high school's ADM.
- (2) Physical fitness programs and physical education classes currently offered by the public high school.

(d) A public high school that receives a grant under this section must use the grant for one (1) or more of the following:

- (1) Salaries of and other costs related to physical education teachers.
- (2) Classes and extracurricular activities related to physical education and fitness, other than interscholastic athletics.
- (3) Other expenses related to physical education and fitness that are approved by the department.

SECTION 4. [EFFECTIVE JANUARY 1, 2007] (a) For purposes of this SECTION, "minimally nutritious food or beverage" has the meaning set forth in IC 6-8-12-3, as added by this act.

(b) IC 6-8-12, as added by this act, applies to a sale of a minimally nutritious food or beverage occurring after December 31, 2006.

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