

FIRST REGULAR SESSION

HOUSE BILL NO. 1138

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RHOADS.

2072L.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 195, RSMo, by adding thereto six new sections relating to taxation of unauthorized substances.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 195, RSMo, is amended by adding thereto six new sections, to be known as sections 195.620, 195.621, 195.622, 195.623, 195.624, and 195.625, to read as follows:

195.620. As used in sections 195.620 to 195.625, the following terms mean:

- (1) "Controlled substance", any drug, substance, or immediate precursor placed in Schedules I through IV listed in this chapter. "Controlled substance" shall not include any drug, substance, or immediate precursor possessed by any person upon a prescription of an authorized practitioner;**
- (2) "Dealer", any person who actually or constructively possesses:**
 - (a) More than thirty-five grams of marijuana; or**
 - (b) One or more marijuana plants;**
 - (c) Seven or more grams of any other unauthorized substance that is sold by weight; or**
 - (d) Ten or more dosage units of any other unauthorized substance that is not sold by weight;**
- (3) "Director", the director of the department of revenue;**
- (4) "Law enforcement agency", any state agency or department, any local police department, or any sheriff's office authorized to enforce criminal laws;**
- (5) "Low-street-value drug", any of the following controlled substances:**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 (a) Any anabolic steroid as defined in this chapter;
18 (b) Any depressant or stimulant substance as defined in this chapter;
19 (c) Any controlled substance with a hallucinogenic effect as described in this
20 chapter;
21 (d) Any substance placed in Schedule V under this chapter;
22 (6) "Marijuana", all parts of the plant genus *Cannabis* in any species or form
23 thereof, including, but not limited to *Cannabis Sativa* L., *Cannabis Indica*, *Cannabis*
24 *Americana*, *Cannabis Ruderalis*, and *Cannabis Gigantea*, whether growing or not, the
25 seeds thereof, the resin extracted from any part of the plant; and every compound,
26 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It
27 does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake
28 made from the seeds of the plant, any other compound, manufacture, salt, derivative,
29 mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber,
30 oil or cake, or the sterilized seed of the plant which is incapable of germination;
31 (7) "Person", any individual, corporation, political subdivision, or other legal
32 entity;
33 (8) "Unauthorized substance", any controlled substance except any low-street-
34 value drug.

- 195.621. 1. An excise tax is hereby levied on unauthorized substances possessed,
2 either actually or constructively, transported, transferred, sold, or offered to be sold in
3 violation of Missouri law, by dealers at the following rates:
4 (1) Forty cents for each gram, or fraction thereof, of harvested marijuana stems
5 and stalks that have been separated from and are not mixed with any other parts of the
6 marijuana plant;
7 (2) Three dollars and fifty cents for each gram, or fraction thereof, of marijuana,
8 other than separated stems and stalks taxed under subdivision (1) of this subsection or
9 plants with foliage taxed under subdivision (3) of this subsection;
10 (3) Three hundred fifty dollars per plant, whether growing or detached from the
11 soil, on each marijuana plant with foliage;
12 (4) Fifty dollars for each gram, or fraction thereof, of cocaine;
13 (5) Two hundred dollars for each gram, or fraction thereof, of any other controlled
14 substance or low-street-value drug that is sold by weight;
15 (6) Fifty dollars for each ten dosage units, or fraction thereof, of any
16 low-street-value drug that is not sold by weight; or
17 (7) Two hundred dollars for each ten dosage units, or fraction thereof, of any other
18 controlled substance that is not sold by weight.

19 **2. A quantity of marijuana or other unauthorized substance shall be measured by**
20 **the weight of the substance whether pure, impure or dilute, or by the number of dosage**
21 **units in the dealer's possession when the substance is not sold by weight. A quantity of an**
22 **unauthorized substance shall be deemed dilute if it consists of a detectable quantity of pure**
23 **controlled substance and any excipients or fillers.**

24 **3. For purposes of this section, a person constructively possesses an unauthorized**
25 **substance when the person has knowledge of the substance and the ability and intention**
26 **to exercise control over the substance.**

27 **4. The tax levied in this section shall not apply to a substance in the possession of**
28 **a dealer who is authorized by law to possess the substance. This exemption shall apply**
29 **only during the time the dealer's possession of the substance is authorized by law.**

30 **5. The tax levied in this section shall not apply to the following marijuana:**

31 **(1) Harvested mature marijuana stalks when separated from and not mixed with**
32 **any other parts of the marijuana plant;**

33 **(2) Fiber or any other product of marijuana stalks described in subdivision (1) of**
34 **this subsection, except resin extracted from the stalks;**

35 **(3) Marijuana seeds that have been sterilized and are incapable of germination; or**

36 **(4) Roots of the marijuana plant.**

195.622. 1. The director shall issue stamps to affix to unauthorized substances to
2 **indicate payment of the tax required by sections 195.620 to 195.625. Dealers shall report**
3 **the taxes payable at the time and on the form prescribed by the director. Dealers shall not**
4 **be required to give their name, address, Social Security number, or other identifying**
5 **information on the form. Upon payment of the tax, the director shall issue stamps in an**
6 **amount equal to the amount of the tax paid. Taxes shall be paid and stamps shall be issued**
7 **either by mail or in person.**

8 **2. Every law enforcement agency shall report to the department of revenue within**
9 **forty-eight hours after seizing an unauthorized substance, or making an arrest of an**
10 **individual in possession of an unauthorized substance, listed in this subsection upon which**
11 **a stamp has not been affixed. The report shall be in the manner prescribed by the director,**
12 **and shall include the time and place of the arrest or seizure, the amount, location, and kind**
13 **of substance, the identification of any individual in possession of the substance and such**
14 **individual's Social Security number, and any other information prescribed by the director.**
15 **The report shall be made when the arrest or seizure involves any of the following**
16 **unauthorized substances upon which a stamp has not been affixed as required by sections**
17 **195.620 to 195.625:**

18 **(1) More than thirty-five grams of marijuana;**

- 19 (2) One or more marijuana plants;
20 (3) Seven or more grams of any other unauthorized substance that is sold by
21 weight; or
22 (4) Ten or more dosage units of any other unauthorized substance that is not sold
23 by weight.
- 24 3. Any report from any crime laboratory in the state relating to the testing,
25 analysis, or identification of any unstamped unauthorized substance seized by any law
26 enforcement agency shall be provided to the department of revenue within ten days of the
27 laboratory's findings for the purposes of sections 195.620 to 195.625.

195.623. 1. The tax imposed under sections 195.620 to 195.625 shall be paid by any
2 dealer who actually or constructively possesses an unauthorized substance in this state
3 upon which the tax has not been paid as evidenced by a stamp issued by the director. The
4 tax shall be paid within forty-eight hours after the dealer acquires actual or constructive
5 possession of a nontax-paid unauthorized substance, exclusive of Saturdays, Sundays, and
6 legal holidays of this state, in which case the tax shall be paid on the next business day. If
7 the tax is not paid within forty-eight hours, the tax shall become delinquent and shall
8 accrue penalties and any interest under section 32.065. Upon payment of the tax, the
9 dealer shall permanently affix the appropriate stamps to the unauthorized substance.
10 Once the tax due on an unauthorized substance has been paid, no additional tax is due
11 under sections 195.620 to 195.625 even though the unauthorized substance may be handled
12 by other dealers. If a dealer is found in possession of a substance taxable under sections
13 195.620 to 195.625 that does not have the appropriate tax stamp affixed, it shall be
14 presumed the dealer has been in possession of such substance for longer than forty-eight
15 hours, exclusive of Saturdays, Sundays, and legal holidays of this state.

16 2. Notwithstanding any other provision of law to the contrary, an assessment
17 against a dealer who possesses an unauthorized substance to which a stamp has not been
18 affixed as required by sections 195.620 to 195.625 shall be made as provided in this section.
19 The director shall immediately assess the tax, applicable penalty, and interest based on any
20 information brought to the attention of the director, or the director's duly authorized
21 assistants, that a person is liable for unpaid tax under sections 195.620 to 195.625. The tax
22 shall be assessed in the same manner as any other tax assessment, except when sections
23 195.620 to 195.625 specify otherwise. The director shall notify the dealer in writing of the
24 amount of the tax, penalty, and interest due, and demand its immediate payment. The
25 notice of assessment and demand for payment shall be either mailed to the dealer at the
26 dealer's last known address or served on the dealer in person. If the dealer does not pay
27 the tax, penalty, and interest immediately upon receipt of the notice and demand, the

28 director shall collect the assessment, including penalty and interest, under the procedures
29 in chapter 140 unless the dealer files with the director sufficient security in the amount of
30 the assessment, including penalty and interest. If security is not provided, the director
31 shall use all means available to collect the assessment from any property in which the
32 dealer has a legal, equitable, or beneficial interest. Any claim for a refund of the taxes paid
33 shall be filed within six months of the date of payment of the tax.

195.624. 1. There is hereby created in the state treasury the "Drug Task Force
2 Enforcement Fund", which shall consist of moneys collected under sections 195.620 to
3 195.625. The state treasurer shall be custodian of the fund and may approve
4 disbursements from the fund in accordance with sections 30.170 and 30.180. The fund
5 shall be a dedicated fund and, upon appropriation, money in the fund shall be used solely
6 for the purposes of sections 195.620 to 195.625. Notwithstanding the provisions of section
7 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall
8 not revert to the credit of the general revenue fund. The state treasurer shall invest
9 moneys in the fund in the same manner as other funds are invested. Any interest and
10 moneys earned on such investments shall be credited to the fund.

11 2. The director shall credit the proceeds of the tax levied under sections 195.620 to
12 195.625 to the drug task force enforcement fund until the tax proceeds are unencumbered.
13 The state treasurer shall remit the unencumbered tax proceeds as provided in this section
14 on a quarterly or more frequent basis.

15 3. (1) Tax proceeds shall be deemed unencumbered under this section when:

16 (a) The tax has been paid and the collection process completed; and

17 (b) a. The taxpayer has no current right to file a refund claim, and the paid tax is
18 not the subject of any pending lawsuit for the recovery of that tax; or

19 b. The time for the taxpayer to file suit for a refund has expired.

20 (2) The state treasurer shall first apply the unencumbered tax proceeds to the costs
21 of storing and disposing of the assets seized in payment of the assessment under sections
22 195.620 to 195.625, which costs shall be added to and become part of the assessment. The
23 state treasurer shall remit the remaining unencumbered tax proceeds that were collected
24 by assessment to each of the following entities in the following percentages:

25 (a) The department of revenue, twenty percent, for the cost of collection;

26 (b) The department of health and senior services, ten percent, to fund drug
27 treatment and antidrug public awareness programs;

28 (c) The department of public safety, seventy percent, to fund multijurisdictional
29 enforcement groups, as defined in this chapter, for the purpose of investigating, combating,

30 preventing, and reducing drug-related crimes, to be distributed based on population served
31 and demonstrated need as determined by the department of public safety.

32 4. Notwithstanding any other provision of this section to the contrary, in the event
33 the tax levied under sections 195.620 to 195.625 is voluntarily paid to the department of
34 revenue, and not as a result of an investigation or arrest by a law enforcement agency, such
35 voluntarily paid tax shall be considered unencumbered upon payment, and the director
36 shall credit the entire tax proceeds to the general revenue fund.

2 195.625. 1. The provisions of sections 195.620 to 195.625 shall not be construed to
3 confer any immunity from criminal prosecution or conviction for a violation of this chapter
4 or chapter 579 upon any person who voluntarily pays the tax imposed under sections
5 195.620 to 195.625 or who otherwise complies with sections 195.620 to 195.625.

6 2. Notwithstanding any other provision of law to the contrary, information
7 obtained under sections 195.620 to 195.625 shall be confidential and, unless independently
8 obtained, shall not be used in a criminal prosecution other than a prosecution for a
9 violation of sections 195.620 to 195.625. Stamps issued under sections 195.620 to 195.625
10 shall not be used in a criminal prosecution other than a prosecution for a violation of
11 sections 195.620 to 195.625. Nothing in this section nor section 32.057 shall be construed
12 to prohibit the director from publishing statistics that do not disclose the identity of dealers
13 or the contents of particular returns or reports.

14 3. (1) There is hereby established a commission to review the rates of the tax levied
15 under sections 195.620 to 195.625 and to make recommendations concerning increases in
16 the rate of the tax to the general assembly. The commission shall be known as the
17 "Unauthorized Substance Tax Commission", and shall consist of five members as follows:

- 18 (a) The superintendent of the Missouri state highway patrol;
- 19 (b) The director of the Missouri state highway patrol crime laboratory;
- 20 (c) The director of the department of revenue;
- 21 (d) Two members who are employees of any county or municipal law enforcement
22 agency, to be appointed by the governor.

23 (2) Of the initial members appointed by the governor, one shall hold office for one
24 year, and one shall hold office for two years. Members appointed after expiration of the
25 initial terms shall be appointed to a two-year term. Each member may be reappointed.
26 Vacancies shall be filled by appointment by the governor for the remainder of the
27 unexpired term. The members shall not receive compensation for their services, but may
28 be reimbursed for their actual and necessary expenses incurred in service of the
commission.

29 **4. The department of revenue may promulgate rules to implement the provisions**
30 **of sections 195.620 to 195.625. Any rule or portion of a rule, as that term is defined in**
31 **section 536.010, that is created under the authority delegated in this section shall become**
32 **effective only if it complies with and is subject to all of the provisions of chapter 536 and,**
33 **if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of**
34 **the powers vested with the general assembly under chapter 536 to review, to delay the**
35 **effective date, or to disapprove and annul a rule are subsequently held unconstitutional,**
36 **then the grant of rulemaking authority and any rule proposed or adopted after August 28,**
37 **2015, shall be invalid and void.**

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