

SECOND REGULAR SESSION

# SENATE BILL NO. 1067

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time February 17, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6539S.01I

## AN ACT

To amend chapter 195, RSMo, by adding thereto six new sections relating to the 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) One or more grams of any other unauthorized substance that is sold by weight; or

(d) One 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:

- 21           (a) Any anabolic steroid as defined in this chapter;
- 22           (b) Any depressant or stimulant substance as defined in this  
23 chapter;
- 24           (c) Any controlled substance with a hallucinogenic effect as  
25 described in this chapter;
- 26           (d) Any substance placed in Schedule V under this chapter;
- 27           (6) "Marijuana", any synthetic cannabinoid and all parts of the  
28 plant genus Cannabis in any species or form thereof, including, but not  
29 limited to, Cannabis Sativa L., Cannabis Indica, Cannabis Americana,  
30 Cannabis Ruderalis, and Cannabis Gigantea, whether growing or not,  
31 the seeds thereof, the resin extracted from any part of the plant; and  
32 every compound, manufacture, salt, derivative, mixture, or preparation  
33 of the plant, its seeds, or resin. It does not include the mature stalks  
34 of the plant, fiber produced from the stalks, oil or cake made from the  
35 seeds of the plant, any other compound, manufacture, salt, derivative,  
36 mixture, or preparation of the mature stalks (except the resin extracted  
37 therefrom), fiber, oil or cake, or the sterilized seed of the plant which  
38 is incapable of germination. The term shall not include any nonseed  
39 parts and varieties of the cannabis sativa plant that contain a  
40 tetrahydrocannabinol (THC) concentration that does not exceed three-  
41 tenths of one percent on a dry weight basis;
- 42           (7) "Person", any individual, corporation, political subdivision,  
43 or other legal entity;
- 44           (8) "Unauthorized substance", any controlled substance.
- 195.621. 1. An excise tax is hereby levied on unauthorized  
2 substances possessed, either actually or constructively, transported,  
3 transferred, sold, or offered to be sold in violation of Missouri law, by  
4 dealers at the following rates:
- 5           (1) Forty cents for each gram, or fraction thereof, of harvested  
6 marijuana stems and stalks that have been separated from and are not  
7 mixed with any other parts of the marijuana plant;
- 8           (2) Three dollars and fifty cents for each gram, or fraction  
9 thereof, of marijuana, other than separated stems and stalks taxed  
10 under subdivision (1) of this subsection or plants with foliage taxed  
11 under subdivision (3) of this subsection;
- 12           (3) Three hundred fifty dollars per plant, whether growing or  
13 detached from the soil, on each marijuana plant with foliage;

14 (4) Fifty dollars for each gram, or fraction thereof, of cocaine;

15 (5) Two hundred dollars for each gram, or fraction thereof, of  
16 any other controlled substance or low-street-value drug that is sold by  
17 weight;

18 (6) Fifty dollars for each one dosage unit, or fraction thereof, of  
19 any low-street-value drug that is not sold by weight; or

20 (7) Two hundred dollars for each one dosage unit, or fraction  
21 thereof, of any other controlled substance that is not sold by weight.

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

28 3. For purposes of this section, a person constructively possesses  
29 an unauthorized substance if the person has knowledge of the  
30 substance and the ability and intention to exercise control over the  
31 substance.

32 4. The tax levied in this section shall not apply to a substance in  
33 the possession of a dealer who is authorized by law to possess the  
34 substance. This exemption shall apply only during the time the dealer's  
35 possession of the substance is authorized by law.

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

38 (1) Harvested mature marijuana stalks if separated from and not  
39 mixed with any other parts of the marijuana plant;

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

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

45 (4) Roots of the marijuana plant.

195.622. 1. The director shall issue stamps to affix to  
2 unauthorized substances to indicate payment of the tax required by  
3 sections 195.620 to 195.625. Dealers shall report the taxes payable at  
4 the time and on the form prescribed by the director. Dealers shall not  
5 be required to give their name, address, Social Security number, or

6 other identifying information on the form. Upon payment of the tax,  
7 the director shall issue stamps in an amount equal to the amount of the  
8 tax paid. Taxes shall be paid and stamps shall be issued either by mail  
9 or in person.

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

22 (1) More than one gram of marijuana;

23 (2) One or more marijuana plants;

24 (3) More than one gram of any other unauthorized substance that  
25 is sold by weight; or

26 (4) More than one dosage unit of any other unauthorized  
27 substance that is not sold by weight.

28 3. Any report from any crime laboratory in the state relating to  
29 the testing, analysis, or identification of any unstamped unauthorized  
30 substance seized by any law enforcement agency shall be provided to  
31 the department of revenue within ten days of the laboratory's findings  
32 for the purposes of sections 195.620 to 195.625.

195.623. 1. The tax imposed under sections 195.620 to 195.625  
2 shall be paid by any dealer who actually or constructively possesses an  
3 unauthorized substance in this state upon which the tax has not been  
4 paid as evidenced by a stamp issued by the director. Upon payment of  
5 the tax, the dealer shall permanently affix the appropriate stamps to  
6 the unauthorized substance. Once the tax due on an unauthorized  
7 substance has been paid, no additional tax is due under sections  
8 195.620 to 195.625 even though the unauthorized substance may be  
9 handled by other dealers.

10 2. Notwithstanding any other provision of law to the contrary,

11 an assessment against a dealer who possesses an unauthorized  
12 substance to which a stamp has not been affixed as required by sections  
13 195.620 to 195.625 shall be made as provided in this section. The  
14 director shall immediately assess the tax, applicable penalty, and  
15 interest based on any information brought to the attention of the  
16 director, or the director's duly authorized assistants, that a person is  
17 liable for unpaid tax under sections 195.620 to 195.625. The tax shall be  
18 assessed in the same manner as any other tax assessment, except if  
19 sections 195.620 to 195.625 specify otherwise. The director shall notify  
20 the dealer in writing of the amount of the tax, penalty, and interest  
21 due, and demand its immediate payment. The notice of assessment and  
22 demand for payment shall be either mailed to the dealer at the dealer's  
23 last known address or served on the dealer in person. If the dealer  
24 does not pay the tax, penalty, and interest immediately upon receipt of  
25 the notice and demand, the director shall collect the assessment,  
26 including penalty and interest, under the procedures in chapter 140  
27 unless the dealer files with the director sufficient security in the  
28 amount of the assessment, including penalty and interest. If security  
29 is not provided, the director shall use all means available to collect the  
30 assessment from any property in which the dealer has a legal,  
31 equitable, or beneficial interest. Any claim for a refund of the taxes  
32 paid 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  
2 "Drug Task Force Enforcement Fund", which shall consist of moneys  
3 collected under sections 195.620 to 195.625. The state treasurer shall be  
4 custodian of the fund and may approve disbursements from the fund in  
5 accordance with sections 30.170 and 30.180. The fund shall be a  
6 dedicated fund and, upon appropriation, moneys in the fund shall be  
7 used solely for the purposes of sections 195.620 to  
8 195.625. Notwithstanding the provisions of section 33.080 to the  
9 contrary, any moneys remaining in the fund at the end of the biennium  
10 shall not revert to the credit of the general revenue fund. The state  
11 treasurer shall invest moneys in the fund in the same manner as other  
12 funds are invested. Any interest and moneys earned on such  
13 investments shall be credited to the fund.

14 2. The director shall credit the proceeds of the tax levied under  
15 sections 195.620 to 195.625 to the drug task force enforcement fund

16 until the tax proceeds are unencumbered. The state treasurer shall  
17 remit the unencumbered tax proceeds as provided in this section on a  
18 quarterly or more frequent basis.

19 3. (1) Tax proceeds shall be deemed unencumbered under this  
20 section when:

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

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

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

27 (2) The state treasurer shall first apply the unencumbered tax  
28 proceeds to the costs of storing and disposing of the assets seized in  
29 payment of the assessment under sections 195.620 to 195.625, which  
30 costs shall be added to and become part of the assessment. The state  
31 treasurer shall remit the remaining unencumbered tax proceeds that  
32 were collected by assessment to each of the following entities in the  
33 following percentages:

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

36 (b) The county task force on drugs where the drugs were  
37 captured, forty percent, to fund law enforcement efforts; and

38 (c) The local sheriff's department where the drugs were  
39 captured, forty percent, to fund law enforcement efforts.

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

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

6 2. Notwithstanding any other provision of law to the contrary,

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

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

- 22 (a) The superintendent of the Missouri state highway patrol;
- 23 (b) The director of the Missouri state highway patrol crime  
24 laboratory;
- 25 (c) The director of the department of revenue;
- 26 (d) Two members who are employees of any county or municipal  
27 law enforcement agency, to be appointed by the governor with the  
28 advice and consent of the senate.

29 (2) Of the initial members appointed by the governor, one shall  
30 hold office for one year, and one shall hold office for two  
31 years. Members appointed after expiration of the initial terms shall be  
32 appointed to a two-year term. Each member may be  
33 reappointed. Vacancies shall be filled by appointment by the governor  
34 for the remainder of the unexpired term. The members shall not  
35 receive compensation for their services, but may be reimbursed for  
36 their actual and necessary expenses incurred in service of the  
37 commission.

38 4. The department of revenue may promulgate rules to  
39 implement the provisions of sections 195.620 to 195.625. Any rule or  
40 portion of a rule, as that term is defined in section 536.010, that is  
41 created under the authority delegated in this section shall become  
42 effective only if it complies with and is subject to all of the provisions  
43 of chapter 536 and, if applicable, section 536.028. This section and

44 **chapter 536 are nonseverable, and if any of the powers vested with the**  
45 **general assembly under chapter 536 to review, to delay the effective**  
46 **date, or to disapprove and annul a rule are subsequently held**  
47 **unconstitutional, then the grant of rulemaking authority and any rule**  
48 **proposed or adopted after August 28, 2016, shall be invalid and void.**

✓

Unofficial

Bill

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