

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 94

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EHLMANN.

Offered April 8, 1999.

Senate Substitute adopted, April 12, 1999.

Taken up for Perfection April 12, 1999. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

S0140.08P

AN ACT

To repeal sections 149.011, 149.071 and 570.080, RSMo 1994, and section 570.030, RSMo Supp. 1998, relating to the felony limit for certain crimes, and to enact in lieu thereof four new sections relating to the same subject.

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

Section A. Sections 149.011, 149.071 and 570.080, RSMo 1994, and section 570.030, RSMo Supp. 1998, are repealed and four new sections enacted in lieu thereof, to be known as sections 149.011, 149.071, 570.030 and 570.080, to read as follows:

149.011. As used in this chapter, unless the context requires otherwise, the following terms mean:

(1) "Cigar", any roll for smoking, except cigarettes, made chiefly of tobacco or any substitute therefor;

(2) "Cigarette", an item manufactured of tobacco or any substitute therefor, wrapped in paper or any substitute therefor, weighing not to exceed three pounds per one thousand cigarettes and which is commonly classified, labeled or advertised as a cigarette, **or any product that contains nicotine, as intended to be burned or heated under ordinary conditions of use, and consists of or contains:**

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(b) Tobacco, in any form, that is functional in the product, which, because of its

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(c) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision.

"Cigarette" includes "roll-your-own", which is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and like to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of cigarette, nine one hundredths of an ounce of "roll-your-own" tobacco shall constitute one individual cigarette;

(3) "Common carrier", any person, association, company, or corporation engaged in the business of operating, for public use, an agency for the transportation of persons or property within the state;

(4) "Director", the director of Missouri department of revenue;

(5) "First sale within the state", the first sale of a tobacco product by a manufacturer, wholesaler or other person to a person who intends to sell such tobacco products at retail or to a person at retail within the state of Missouri;

(6) "Manufacturer", any person engaged in the manufacture or production of cigarettes;

(7) "Manufacturer's invoice price", the original net invoice price for which a manufacturer sells a tobacco product to a distributor, wholesaler or first seller in the state as shown by the manufacturer's original invoice;

(8) "Meter machine", a type of device manufactured for the use of printing or imprinting an inked impression indicating that the cigarette tax has been paid on an individual package of cigarettes;

(9) "Package of cigarettes", a container of any type composition in which is normally contained twenty individual cigarettes, except as in special instances when the number may be more or less than twenty, **or a pack, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed, or intended for distribution, to consumers;**

(10) "Person", any individual, corporation, firm, partnership, incorporated or unincorporated association, or any other legal or commercial entity;

(11) "Retailer", any person who sells to a consumer or to any person for any purpose other than resale;

(12) "Sale" in this instance is defined to be and declared to include sales, barter, exchanges and every other manner, method and form of transferring the ownership of personal property from one person to another. "Sale" also means the possession of cigarettes or tobacco

products by any person other than a manufacturer, wholesaler or retailer and shall be prima facie evidence of possession for consumption;

(13) "Smokeless tobacco", chewing tobacco, including, but not limited to, twist, moist plug, loose leaf and firm plug, and all types of snuff, including, but not limited to, moist and dry;

(14) "Stamped cigarettes", an individual package, containing twenty individual cigarettes, more or less, on which appears or is affixed or imprinted thereon a Missouri state cigarette tax stamp or Missouri state meter machine impression;

(15) "Tax stamp", an item manufactured of a paper product or substitute thereof on which is printed, imprinted, or engraved lettering, numerals or symbols indicating that the cigarette tax has been paid on each individual package of cigarettes;

(16) "Tobacco product", cigarettes, cigarette papers, clove cigarettes, cigars, smokeless tobacco, smoking tobacco, or other form of tobacco products or products made with tobacco substitute containing nicotine;

(17) "Unstamped cigarettes", an individual package containing cigarettes on which does not appear a Missouri state cigarette tax stamp or Missouri state meter machine impression;

(18) "Wholesaler", any person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes or tobacco products to, and render service to, retailers in the territory the person, firm or corporation chooses to serve; that purchases cigarettes or tobacco products directly from the manufacturer; that carries at all times at his or its principal place of business a representative stock of cigarettes or tobacco products for sale; and that comes into the possession of cigarettes or tobacco products for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail the cigarettes or tobacco products to consumers. This shall include any manufacturer, jobber, broker, agent or other person, whether or not enumerated in this chapter, who so sells or so distributes cigarettes or tobacco products.

149.071. **1.** Any person who shall, without the authorization of the director of revenue, make or manufacture, or who shall falsely or fraudulently forge, counterfeit, reproduce, restore, or process any stamp, impression, copy, facsimile, or other evidence for the purpose of indicating the payment of the tax levied by this chapter, or who shall knowingly or by a deceptive act use or pass, or tender as true, or affix, impress, or imprint, by use of any device, rubber stamp or by any other means, or any package containing cigarettes, any unauthorized, false, altered, forged, counterfeit or previously used stamp, impressions, copies, facsimilies or other evidence of cigarette tax payment, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment by the state department of corrections and human resources for a term of not less than two years nor more than five years.

2. No tax stamp may be affixed to, or made upon, any package of cigarettes if:

(1) The package does not comply with all the requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec, 1331 and following), for the

placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States; or

(2) The package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec, 5754;

(3) The package is labeled "For Export Only", "U.S. Tax Exempt", "For Use Outside U. S.", or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(4) The package, or a package containing individually stamped packages, has been altered by masking or deleting the wording described in subdivision (3) of this subsection.

3. Any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section shall be guilty of a class D felony upon conviction.

4. The department of revenue may revoke a wholesale license of any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section.

5. The department of revenue may seize and destroy or sell only for export to licensed exporters cigarette packages to which is affixed a tax stamp in violation of this section.

6. A violation of this section is a deceptive act or practice under this section.

7. If any provision of this section or its application to any person or circumstance is held invalid, the remainder of this section or the application of the provision to other persons or circumstances is not affected.

570.030. 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

2. Evidence of the following is admissible in any criminal prosecution under this section on the issue of the requisite knowledge or belief of the alleged stealer:

(1) That he or she failed or refused to pay for property or services of a hotel, restaurant, inn or boardinghouse;

(2) That he or she gave in payment for property or services of a hotel, restaurant, inn or boardinghouse a check or negotiable paper on which payment was refused;

(3) That he or she left the hotel, restaurant, inn or boardinghouse with the intent to not pay for property or services;

(4) That he or she surreptitiously removed or attempted to remove his or her baggage from a hotel, inn or boardinghouse.

3. Stealing is a class C felony if:

(1) The value of the property or services appropriated is [seven] **five** hundred [fifty]

dollars or more; or

(2) The actor physically takes the property appropriated from the person of the victim; or

(3) The property appropriated consists of:

(a) Any motor vehicle, watercraft or aircraft; or

(b) Any will or unrecorded deed affecting real property; or

(c) Any credit card or letter of credit; or

(d) Any firearms; or

(e) A United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; or

(f) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri; or

(g) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States; or

(h) Any book of registration or list of voters required by chapter 115, RSMo; or

(i) Any animal of the species of horse, mule, ass, cattle, swine, sheep, or goat; or

(j) Live fish raised for commercial sale with a value of seventy-five dollars; or

(k) Any controlled substance as defined by section 195.010, RSMo.

4. If an actor appropriates any material with a value less than one hundred fifty dollars in violation of this section with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues, then such violation is a class D felony. The theft of any amount of anhydrous ammonia, **or any attempt to steal any amount of anhydrous ammonia**, is a class D felony **if the value is less than one hundred fifty dollars, and a class C felony if the value is one hundred fifty dollars or more.**

5. The theft of any item of property or services under subsection [3] 4 of this section which exceeds [seven] **five** hundred [fifty] dollars may be considered a separate felony and may be charged in separate counts.

6. Any person with a prior conviction of paragraph (i) of subdivision (3) of subsection [3] 4 of this section and who violates the provisions of paragraph (i) of subdivision (3) of subsection [3] 4 of this section when the value of the animal or animals stolen exceeds three thousand dollars is guilty of a class B felony.

7. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

570.080. 1. A person commits the crime of receiving stolen property if for the purpose of depriving the owner of a lawful interest therein, he receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

2. Evidence of the following is admissible in any criminal prosecution under this section

to prove the requisite knowledge or belief of the alleged receiver:

(1) That he was found in possession or control of other property stolen on separate occasions from two or more persons;

(2) That he received other stolen property in another transaction within the year preceding the transaction charged;

(3) That he acquired the stolen property for a consideration which he knew was far below its reasonable value.

3. Receiving stolen property is a class A misdemeanor unless the property involved has a value of **at least [one] five** hundred [fifty] dollars **in which case receiving stolen property is a class D felony. If the property involved has a value of five hundred dollars** or more, or the person receiving the property is a dealer in goods of the type in question, in which cases receiving stolen property is a class C felony.

4. Any person who knowingly or intentionally leaves a child less than seven years of age in a motor vehicle, and that child is unattended by an individual twelve years of age or older, shall be guilty of an infraction.

✓

Bill

Copy