

HCS HB 1138 -- REGULATION OF UNAUTHORIZED SUBSTANCES

SPONSOR: Rhoads

COMMITTEE ACTIONS: Voted "Do Pass with Amendments" by the Standing Committee on Emerging Issues by a vote of 8 to 3 with 1 present. Voted "Do Pass" by the Select Committee on General Laws by a vote of 6 to 3.

This bill imposes an excise tax on specified controlled substances possessed, transported, transferred, sold, or offered to be sold in violation of Missouri law by dealers. A "controlled substance" is defined as any drug, substance, or immediate precursor placed in Schedules I through IV, as specified in the bill, but not any drug, substance, or immediate precursor possessed by any individual with a prescription from an authorized practitioner.

The tax must be paid by any "dealer," who is defined as any person who actually or constructively possesses more than 35 grams of marijuana or one or more marijuana plants, one or more grams of any other unauthorized substance that is sold by weight, or one or more dosage units of any other unauthorized substance that is not sold by weight.

The tax rates for each controlled substance and the criteria for measuring weight or dose is specified in the bill.

The tax must not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption must only apply during the time the dealer's possession of the substance is authorized by law.

The tax must not apply to the following marijuana:

- (1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant;
- (2) Fiber or any other product of marijuana stalks described in these provisions except resin extracted from the stalks;
- (3) Marijuana seeds that have been sterilized and are incapable of germination; or
- (4) Roots of the marijuana plant.

The Director of the Department of Revenue must issue stamps to affix to unauthorized substances to indicate payment of the tax. Dealers must report the taxes payable at the time and on the form prescribed by the director. Dealers must not be required to give

their name, address, Social Security number, or other identifying information on the form. Upon payment of the tax, the director must issue stamps in an amount equal to the amount of the tax paid. Taxes must be paid and stamps issued either by mail or in person.

Every law enforcement agency must report to the department within 48 hours after seizing an unauthorized substance or making an arrest of an individual in possession of an unauthorized substance that does not have a stamp affixed. The criteria and required information for the report are specified in the bill. A report from any state crime laboratory relating to the testing, analysis, or identification of any unstamped unauthorized substance seized by any law enforcement agency must be provided to the department within 10 days of the findings.

A notice of assessment and demand for payment must be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the director must collect the assessment, including penalty and interest, under the procedures in Chapter 140, RSMo, unless the dealer files with the director sufficient security in the amount of the assessment, including penalty and interest. Any claim for a refund of the taxes paid must be filed within six months of the date of payment of the tax.

The Drug Task Force Enforcement Fund is created and will consist of moneys collected by the tax. The department director must credit the proceeds of the tax levied to the fund until the tax proceeds are unencumbered. The State Treasurer must remit the unencumbered tax proceeds on a quarterly or more frequent basis as specified in these provisions.

Tax proceeds are deemed unencumbered when:

- (1) The tax has been paid and the collection process completed; and
- (2) The taxpayer does not have a current right to file a refund claim, and the paid tax is not the subject of a pending lawsuit for the recovery of the tax or the time to file a suit for a refund has expired.

The State Treasurer must first apply the unencumbered tax proceeds to the costs of storing and disposing of the assets seized in payment of the assessment. The treasurer must remit the remaining unencumbered tax proceeds that are collected by assessment to the departments of Revenue, Health and Senior Services, and Public Safety. The percentages for each department and specific uses of

the proceeds are provided in the bill.

If the tax levied is voluntarily paid to the Department of Revenue, without an investigation or arrest, the tax must be considered unencumbered and the director must credit the entire tax proceeds to the General Revenue Fund.

The provisions of the bill must not be construed to confer any immunity from criminal prosecution or conviction for a violation of these provisions or Chapter 579 upon any individual who voluntarily pays the tax or who otherwise complies with the provisions of the bill. Information obtained when the tax is paid must be confidential and, unless independently obtained, must not be used in a criminal prosecution other than a prosecution for a violation of these provisions. Stamps issued must not be used in a criminal prosecution other than a prosecution for a violation of these provisions. The department director may publish statistics that do not disclose the identity of dealers or the contents of a particular return or report.

The Unauthorized Substance Tax Commission is established to review the rates of the tax levied and to make recommendations concerning increases in the rate of the tax to the General Assembly. The commission will consist of five members, including two members appointed by the Governor. The initial members appointed by the Governor will hold staggered terms.

The members will not receive compensation for their services, but may be reimbursed for actual and necessary expenses incurred in service of the commission.

The Department of Revenue may establish rules to implement the provisions of the bill.

The bill also allows for the expansion of the existing hemp extract clinical trial program under Chapter 192 for certain types of intractable epilepsy. Clinical trials for a wide variety of disorders may be authorized by departmental rule and those conducting and participating in the study on the recommendation of neurologists must be immune from civil and criminal and administrative penalties.

PROPONENTS: Supporters say that the bill will provide funding for drug task forces and drug treatment programs and will impose an additional burden on drug dealers. Other states have gained significant revenue from similar legislation.

Testifying for the bill were Representative Rhoads; Chris Heitman; and Jason Grellner, Missouri Narcotics Association.

OPPONENTS: There was no opposition voiced to the committee.