

SECOND REGULAR SESSION

HOUSE BILL NO. 1877

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FOLEY, GRAHAM AND O'TOOLE (Co-sponsors).

Read 1st time February 11, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4425L.01I

AN ACT

To repeal sections 144.140, 144.190, 144.710, 313.805, 313.820, and 313.822, RSMo, and to enact in lieu thereof seven new sections for the sole purpose of establishing and funding the schools of the future fund, with an emergency clause.

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

Section A. Sections 144.140, 144.190, 144.710, 313.805, 313.820, and 313.822, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 136.320, 144.140, 144.190, 144.710, 313.805, 313.820, and 313.822, to read as follows:

136.320. 1. Notwithstanding the provisions of any other law to the contrary, with respect to taxes administered by the department of revenue, an amnesty from the assessment or payment of all penalties, additions to tax, and interest shall apply with respect to unpaid taxes reported and paid in full from August 1, 2002, to September 30, 2002, regardless of whether previously assessed, except for penalties, additions to tax, and interest paid before August 1, 2002. The amnesty shall apply only to state tax liabilities due but unpaid on or before December 31, 2001, and shall not extend to any taxpayer who at the time of payment:

(1) Is a party to any criminal investigations or to any civil or criminal litigation that is pending in any court of the United States or this state for nonpayment, delinquency, or fraud in relation to any state tax imposed by the state of Missouri;

(2) Is a party to an appeal with the administrative hearing commission; or

(3) Is a party to a protest with the department of revenue.

2. Upon written application by the taxpayer, on forms prescribed by the director

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

15 of revenue, and upon compliance with the provisions of this section, the department of
16 revenue shall not seek to collect any penalty, addition to tax, or interest which may be
17 applicable. The department of revenue shall not seek civil or criminal prosecution for any
18 taxpayer for the taxable period for which the amnesty has been granted.

19 **3. Amnesty shall be granted only to those taxpayers who have applied for amnesty**
20 **within the period stated in subsection 1 of this section, who have filed a tax return for each**
21 **taxable period for which amnesty is requested, who have paid the entire balance due within**
22 **sixty days of approval by the department of revenue, and who agree to comply with state**
23 **tax laws for the next three years from the date of the agreement. No taxpayer shall be**
24 **entitled to a waiver of any penalty, addition to tax, or interest pursuant to this section**
25 **unless full payment of the tax due is made in accordance with rules and regulations**
26 **established by the director of revenue.**

27 **4. A collection fee, not to exceed twenty-five percent of the delinquent tax amount,**
28 **may be imposed but shall not be subject to waiver or abatement. The collection fee shall**
29 **be in addition to all other penalties and interest otherwise authorized by law and may be**
30 **imposed upon any tax liabilities eligible to be satisfied during the amnesty period**
31 **established pursuant to subsection 1 of this section that are not satisfied during such**
32 **period.**

33 **5. If a taxpayer elects to participate in the amnesty program established pursuant**
34 **to this section as evidenced by full payment of the tax due as established by the director of**
35 **revenue, that election shall constitute an express and absolute relinquishment of all**
36 **administrative and judicial rights of appeal. No tax payment received pursuant to this**
37 **section shall be eligible for refund or credit.**

38 **6. Nothing in this section shall be interpreted to disallow the department of revenue**
39 **to adjust a taxpayer's tax return as a result of any state or federal audit.**

40 **7. All tax payments received as a result of the amnesty program established**
41 **pursuant to this section shall be deposited in the schools of the future fund created**
42 **pursuant to section 313.822, RSMo.**

43 **8. The department may promulgate such rules or regulations or issue**
44 **administrative guidelines as are necessary to administer the provisions of this section. No**
45 **rule or portion of a rule promulgated pursuant to the authority of this section shall become**
46 **effective unless it has been promulgated pursuant to chapter 536, RSMo.**

144.140. **1. From every remittance to the director of revenue made on or before the date**
2 **when the same becomes due, the person required to remit the same shall be entitled to deduct and**
3 **retain an amount equal to [two percent thereof]:**

4 **(1) Two percent for any annual sales tax remittance filed pursuant to section**

5 **144.080; and**

6 **(2) One-half of one percent for any quarterly, monthly, or quarter-monthly sales**
7 **tax remittance filed pursuant to sections 144.080 to 144.081.**

8 **2. Additional revenue resulting from the implementation of this section shall be**
9 **deposited in the schools of the future fund created pursuant to section 313.822, RSMo.**

10 144.190. 1. If a tax has been incorrectly computed by reason of a clerical error or
11 mistake on the part of the director of revenue, such fact shall be set forth in the records of the
12 director of revenue, and the amount of the overpayment shall be credited on any taxes then due
13 from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and
14 the balance shall be refunded to the person legally obligated to remit the tax, such person's
15 administrators or executors, as provided for in section 144.200.

16 2. If any [tax,] penalty or interest has been paid more than once, or has been erroneously
17 or illegally collected, or has been erroneously or illegally computed, such sum shall be credited
18 on any taxes then due from the person legally obligated to remit the tax pursuant to sections
19 144.010 to 144.510, and the balance, with interest as determined by section 32.065, RSMo, shall
20 be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be
21 allowed unless duplicate copies of a claim for refund are filed within three years from date of
22 overpayment.

23 3. **If any tax was paid more than once, was incorrectly collected, or was incorrectly**
24 **computed, such sum shall be credited on any taxes then due from the person legally**
25 **obligated to remit the tax pursuant to sections 144.010 to 144.510, or refunded, with**
26 **interest as determined by section 32.065, RSMo, to the person legally obligated to remit the**
27 **tax, only if duplicate copies of a claim for refund are filed within three years from date of**
28 **overpayment and, either the person legally obligated to remit the tax demonstrates to the**
29 **satisfaction of the director of revenue that all incorrectly collected or incorrectly computed**
30 **amounts were or will be refunded or credited to every purchaser that originally paid the**
31 **tax, or the person legally obligated to remit the tax submits to the director of revenue**
amended sales tax returns showing the correct amount of gross receipts for each reporting
period originally filed and proves to the director's satisfaction that the tax originally
reported and remitted to the director was paid by such person claiming the refund or
credit and was not collected from purchasers. The commissioner of administration shall,
on an annual basis, estimate the amount of additional state revenue resulting from this
provision and shall transfer an equivalent amount to the schools of the future fund.

4. Every claim for refund must be in writing and signed by the applicant, and must state
the specific grounds upon which the claim is founded. Any refund or any portion thereof which
is erroneously made, and any credit or any portion thereof which is erroneously allowed, may be

32 recovered in any action brought by the director of revenue against the person legally obligated
33 to remit the tax. In the event that a tax has been illegally imposed against a person legally
34 obligated to remit the tax, the director of revenue shall authorize the cancellation of the tax upon
35 the director's record.

36 [4.] 5. Notwithstanding the provisions of this section, the director of revenue shall
37 authorize direct-pay agreements to purchasers which have annual purchases in excess of seven
38 hundred fifty thousand dollars pursuant to rules and regulations adopted by the director of
39 revenue. For the purposes of such direct-pay agreements, the taxes authorized pursuant to
40 chapters 66, 67, 92 and 94, RSMo, shall be remitted based upon the location of the place of
41 business of the purchaser.

144.710. From every remittance made by a vendor as required by sections 144.600 to
2 144.745 to the director of revenue on or before the date when the remittance becomes due, the
3 vendor may deduct and retain an amount equal to [two percent thereof]:

4 (1) **Two percent for any annual use tax remittance filed pursuant to section**
5 **144.655; and**

6 (2) **One-half of one percent for any quarterly or monthly use tax remittance filed**
7 **pursuant to section 144.655.**

8 **2. Additional revenue resulting from the implementation of this section shall be**
9 **deposited in the schools of the future fund created pursuant to section 313.822, RSMo.**

313.805. The commission shall have full jurisdiction over and shall supervise all
2 gambling operations governed by sections 313.800 to 313.850. The commission shall have the
3 following powers and shall promulgate rules and regulations to implement sections 313.800 to
4 313.850:

5 (1) To investigate applicants and determine the priority and eligibility of applicants for
6 a license and to select among competing applicants for a license the applicant which best serves
7 the interests of the citizens of Missouri;

8 (2) To license the operators of excursion gambling boats and operators of gambling
9 games within such boats, to identify occupations within the excursion gambling boat operations
10 which require licensing, and adopt standards for licensing the occupations including establishing
11 fees for the occupational licenses and to license suppliers;

12 (3) To adopt standards under which all excursion gambling boat operations shall be held
13 and standards for the facilities within which the gambling operations are to be held.
14 Notwithstanding the provisions of chapter 311, RSMo, to the contrary, the commission may
15 authorize the operation of gambling games on an excursion gambling boat which is also licensed
16 to sell or serve alcoholic beverages, wine, or beer. The commission shall regulate the wagering
17 structure for gambling excursions [including providing a maximum loss of five hundred dollars

18 per individual player per gambling excursion];

19 (4) To enter the premises of excursion gambling boats, facilities, or other places of
20 business of a licensee within this state to determine compliance with sections 313.800 to
21 313.850;

22 (5) To investigate alleged violations of sections 313.800 to 313.850 or the commission
23 rules, orders, or final decisions;

24 (6) To assess any appropriate administrative penalty against a licensee, including, but
25 not limited to, suspension, revocation, and penalties of an amount as determined by the
26 commission up to three times the highest daily amount of gross receipts derived from wagering
27 on the gambling games, whether unauthorized or authorized, conducted during the previous
28 twelve months as well as confiscation and forfeiture of all gambling game equipment used in the
29 conduct of unauthorized gambling games. Forfeitures pursuant to this section shall be enforced
30 as provided in sections 513.600 to 513.645, RSMo;

31 (7) To require a licensee, an employee of a licensee or holder of an occupational license
32 to remove a person violating a provision of sections 313.800 to 313.850 or the commission rules,
33 orders, or final orders, or other person deemed to be undesirable from the excursion gambling
34 boat or adjacent facilities;

35 (8) To require the removal from the premises of a licensee, an employee of a licensee,
36 or a holder of an occupational license for a violation of sections 313.800 to 313.850 or a
37 commission rule or engaging in a fraudulent practice;

38 (9) To require all licensees to file all financial reports required by rules and regulations
39 of the commission;

40 (10) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for
41 the production of books, records, and other pertinent documents, and to administer oaths and
42 affirmations to the witnesses, when, in the judgment of the commission, it is necessary to enforce
43 sections 313.800 to 313.850 or the commission rules;

44 (11) To keep accurate and complete records of its proceedings and to certify the records
45 as may be appropriate;

46 (12) To ensure that the gambling games are conducted fairly. No gambling device shall
47 be set to pay out less than eighty percent of all wagers;

48 (13) To require all licensees of gambling game operations to use a cashless wagering
49 system whereby all players' money is converted to physical or electronic tokens, electronic cards,
50 or chips which only can be used for wagering on the excursion gambling boat;

51 (14) To require excursion gambling boat licensees to develop a system, approved by the
52 commission, that allows patrons the option to prohibit the excursion gambling boat licensee from
53 using identifying information for marketing purposes. The provisions of this subdivision shall

54 apply only to patrons giving identifying information for the first time. Such system shall be
55 submitted to the commission by October 1, 2000, and approved by the commission by January
56 1, 2001. The excursion gambling boat licensee shall use identifying information obtained from
57 patrons who have elected to have marketing blocked under the provisions of this section only for
58 the purposes of enforcing the requirements contained in sections 313.800 to 313.850. This
59 section shall not prohibit the commission from accessing identifying information for the
60 purposes of enforcing section 313.004 and sections 313.800 to 313.850;

61 (15) To determine which of the authorized gambling games will be permitted on any
62 licensed excursion gambling boat;

63 (16) Excursion gambling boats shall cruise, unless the commission finds that the best
64 interest of Missouri and the safety of the public indicate the need for continuous docking of the
65 excursion gambling boat in any city or county authorized pursuant to subsection 10 of section
66 313.812. The commission shall base its decision to allow continuously docked excursion
67 gambling boats on any of the following criteria: the docking location or the excursion cruise
68 could cause danger to the boat's passengers, violate federal law or the law of another state, or
69 cause disruption of interstate commerce or possible interference with railway or barge
70 transportation. In addition, the commission shall consider economic feasibility or impact that
71 would benefit land-based development and permanent job creation. The commission shall not
72 discriminate among applicants for continuous-docking excursion gambling that are similarly
73 situated with respect to the criteria set forth in this section;

74 (17) The commission shall render a finding concerning the possibility of continuous
75 docking, as described in subdivision (15) of this section, within thirty days after a hearing on any
76 request from an applicant or licensee. Such hearing may be held prior to any final action on
77 licensing to assist an applicant and any city or county in the finalizing of their economic
78 development plan;

79 (18) To require any applicant for a license or renewal of a license to operate an excursion
80 gambling boat to provide an affirmative action plan which has as its goal the use of best efforts
81 to achieve maximum employment of African-Americans and other minorities and maximum
82 participation in the procurement of contractual purchases of goods and services. This provision
83 shall be administered in accordance with all federal and state employment laws, including Title
84 VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991. At license
85 renewal, the licensee will report on the effectiveness of the plan. The commission shall include
86 the licensee's reported information in its annual report to the joint committee on gaming and
87 wagering;

88 (19) To take any other action as may be reasonable or appropriate to enforce sections
89 313.800 to 313.850 and the commission rules.

313.820. 1. An excursion boat licensee shall pay to the commission an admission fee of [two] **three** dollars for each person embarking on an excursion gambling boat with a ticket of admission. One dollar of such fee shall be deposited to the credit of the gaming commission fund as authorized pursuant to section 313.835[.]; **notwithstanding any other provision of law to the contrary, one dollar of such admission fee shall be deposited in the schools of the future fund created pursuant to section 313.822;** and one dollar of such fee shall not be considered state funds and shall be paid to the home dock city or county. Subject to appropriation, one cent of such fee deposited to the credit of the gaming commission fund may be deposited to the credit of the compulsive gamblers fund created pursuant to the provisions of section 313.842. Nothing in this section shall preclude any licensee from charging any amount deemed necessary for a ticket of admission to any person embarking on an excursion gambling boat. If tickets are issued which are good for more than one excursion, the admission fee shall be paid to the commission for each person using the ticket on each excursion that the ticket is used. If free passes or complimentary admission tickets are issued, the excursion boat licensee shall pay to the commission the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate; however, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

2. All licensees are subject to all income taxes, sales taxes, earnings taxes, use taxes, property taxes or any other tax or fee now or hereafter lawfully levied by any political subdivision; however, no other license tax, permit tax, occupation tax, excursion fee, or taxes or fees shall be imposed, levied or assessed exclusively upon licensees by a political subdivision. All state taxes not connected directly to gambling games shall be collected by the department of revenue. Notwithstanding the provisions of section 32.057, RSMo, to the contrary, the department of revenue may furnish and the commission may receive tax information to determine if applicants or licensees are complying with the tax laws of this state; however, any tax information acquired by the commission shall not become public record and shall be used exclusively for commission business.

313.822. A tax is imposed on the adjusted gross receipts received from **licensed** gambling games authorized pursuant to sections 313.800 to 313.850 at the rate of [twenty] **twenty-two** percent. The taxes imposed by this section shall be returned to the commission in accordance with the commission's rules and regulations who shall transfer such taxes to the director of revenue. All checks and drafts remitted for payment of these taxes and fees shall be made payable to the director of revenue. If the commission is not satisfied with the return or

7 payment made by any licensee, it is hereby authorized and empowered to make an assessment
8 of the amount due based upon any information within its possession or that shall come into its
9 possession. Any licensee against whom an assessment is made by the commission may petition
10 for a reassessment. The request for reassessment shall be made within twenty days from the date
11 the assessment was mailed or delivered to the licensee, whichever is earlier. Whereupon the
12 commission shall give notice of a hearing for reassessment and fix the date upon which the
13 hearing shall be held. The assessment shall become final if a request for reassessment is not
14 received by the commission within the twenty days. Except as provided in this section, on and
15 after April 29, 1993, all functions incident to the administration, collection, enforcement, and
16 operation of the tax imposed by sections 144.010 to 144.525, RSMo, shall be applicable to the
17 taxes and fees imposed by this section.

18 (1) Each excursion gambling boat shall designate a city or county as its home dock. The
19 home dock city or county may enter into agreements with other cities or counties authorized
20 pursuant to subsection 10 of section 313.812 to share revenue obtained pursuant to this section.
21 The home dock city or county shall receive [ten] **two** percent of the adjusted gross receipts [tax
22 collections, as levied pursuant to this section,] for use in providing services necessary for the
23 safety of the public visiting an excursion gambling boat. Such home dock city or county shall
24 annually submit to the commission a shared revenue agreement with any other city or county.
25 All moneys owed the home dock city or county shall be deposited and distributed to such city
26 or county in accordance with rules and regulations of the commission. All revenues provided
27 for in this section to be transferred to the governing body of any city not within a county and any
28 city with a population of over three hundred fifty thousand inhabitants shall not be considered
29 state funds and shall be deposited in such city's general revenue fund to be expended as provided
30 for in this section.

31 (2) [The remaining amount] **Eighteen percent** of the adjusted gross receipts [tax] shall
32 be deposited in the state treasury to the credit of the "Gaming Proceeds for Education Fund"
33 which is hereby created in the state treasury. Moneys deposited in this fund shall be considered
34 the proceeds of excursion boat gambling and state funds pursuant to article IV, section 15 of the
35 Missouri Constitution. All interest received on the gaming proceeds for education fund shall be
36 credited to the gaming proceeds for education fund. Appropriation of the moneys deposited into
37 the gaming proceeds for education fund shall be pursuant to state law.

38 (3) **Two percent of the adjusted gross receipts shall be deposited in the state**
39 **treasury to the credit of the "Schools of the Future Fund" which is hereby created in the**
40 **state treasury. Moneys deposited in this fund shall be considered the proceeds of excursion**
41 **boat gambling and state funds pursuant to article IV, section 15 of the Missouri**
42 **Constitution. All interest received on the schools of the future fund shall be credited to the**

43 **schools of the future fund. The commissioner of administration shall, on an annual basis,**
44 **estimate the amount of additional state revenue resulting from the removal of maximum**
45 **loss limits per individual player per gambling excursion and shall transfer an equivalent**
46 **amount to the schools of the future fund. Appropriation of the moneys deposited into the**
47 **schools of the future fund shall be used solely for the purpose of fully funding state aid to**
48 **public schools pursuant to section 163.031, RSMo.**

Section B. Because immediate action is necessary to ensure that adequate funding is
2 available to fully fund the school foundation formula of this state, section A of this act is deemed
3 necessary for the immediate preservation of the public health, welfare, peace, and safety, and is
4 hereby declared to be an emergency act within the meaning of the constitution, and section A of
5 this act shall be in full force and effect upon its passage and approval.