

HB 1138 -- EXCISE TAX ON UNAUTHORIZED SUBSTANCES

SPONSOR: Rhoads

This bill imposes an excise tax on certain controlled substances. 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," which is defined as any person who actually or constructively possesses more than 35 grams of marijuana, or one or more marijuana plants, or seven or more grams of any other unauthorized substance that is sold by weight, or 10 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 does not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption will only apply during the time the dealer's possession of the substance is authorized by law.

The tax will 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 are not 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 of

Revenue 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. Any state crime laboratory that tests, analyzes or identifies the seized unauthorized and unstamped substance must provide a report to the Department of Revenue within 10 days of the findings.

The tax must be paid by any dealer who actually or constructively possesses an unauthorized substance within forty-eight hours after the dealer acquires actual or constructive possession of a nontax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this state, in which case the tax must be paid on the next business day. If the tax is not paid within 48 hours, the tax will become delinquent and accrue penalties and interest as specified in these provisions. Once the tax due on an unauthorized substance has been paid, no additional tax is due even though the unauthorized substance may be handled by other dealers.

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 will 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 director must credit the proceeds of the tax levied to the drug task force enforcement 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 is to be considered unencumbered and the director must credit the entire tax proceeds to the General Revenue Fund.

The bill does not confer any immunity from criminal prosecution or conviction for a violation of these provisions or Chapter 579, RSMo, for any individual who voluntarily pays the tax or who otherwise complies with the bill. Information obtained when the tax is paid will 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 will not be used in a criminal prosecution other than a prosecution for a violation of these provisions. The director may publish statistics that do not disclose the identity of dealers or the contents of a particular return or report.

This bill established the Unauthorized Substance Tax Commission 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.