

HOUSE BILL 3164

By Curtiss

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 28, relative to the unauthorized substances tax.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by deleting Part 28 in its entirety and by substituting instead the following language:

67-4-2801. The purpose of this part is to levy a tax on every dealer of unauthorized substances to generate revenue for state and local law enforcement agencies for use by those agencies to investigate, combat, prevent and reduce drug crimes, and for the general fund. Nothing in this part may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

67-4-2802.

As used in this part, unless the context clearly requires otherwise:

- (1) "Commissioner" means the commissioner of revenue;
- (2) "Controlled substance" means a controlled substance as defined in § 39-17-402, and not included in "low-street-value drugs";
- (3) "Dealer" means any of the following:
 - (A) Any person who sells, barter, trades, or distributes to another for sale any unauthorized substance; or
 - (B) Any person who purchases, acquires, or otherwise actually or constructively possesses any unauthorized substance with a street value of not less than ten thousand dollars (\$10,000).

(4) "Illicit alcoholic beverage" means an alcoholic beverage, as defined in § 57-3-101, not authorized by the Tennessee alcoholic beverage commission. "Illicit alcoholic beverage" includes, but is not limited to, the products known as "bootleg liquor," "moonshine," "non-tax-paid liquor," and "white liquor;"

(5) "Local law enforcement agency" means a municipal police department, a metropolitan police department, or a sheriff's office;

(6) "Low-street-value drug" means any of the following controlled substances:

(A) An anabolic steroid as defined in § 39-17-410(f);

(B) A depressant described in § 39-17-412(c);

(C) A hallucinogenic substance described in § 39-17-406(d);

(D) A stimulant described in § 39-17-412(e); or

(E) A controlled substance described in § 39-17-414;

(7) "Marijuana" means all parts of the plant of the genus cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin;

(8) "Person" means person as defined in § 39-17-402;

(9) "State law enforcement agency" means any state agency, force, department, or unit responsible for enforcing criminal laws; and

(10) "Unauthorized substance" means a controlled substance, a low-street-value drug or an illicit alcoholic beverage.

67-4-2803.

(a) A tax, as follows, is levied on and payable by any dealer of unauthorized substances:

(1) Forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant;

(2) Three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (a)(1) or plants with foliage taxed under (a)(3);

(3) Three hundred fifty dollars (\$350) per plant, whether growing or detached from the soil, on each marijuana plant with foliage;

(4) Fifty dollars (\$50.00) for each gram, or fraction thereof, of cocaine;

(5) Two hundred dollars (\$200) for each gram, or fraction thereof, of any other controlled substance or low-street-value drug that is sold by weight;

(6) Fifty dollars (\$50.00) for each ten (10) dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight;

(7) Two hundred dollars (\$200) for each ten (10) dosage units, or fraction thereof, of any other controlled substance that is not sold by weight;

(8) Thirty-one dollars and seventy cents (\$31.70) for each gallon, or fraction thereof, of illicit alcoholic beverages sold by the drink; or

(9) Twelve dollars and eighty cents (\$12.80) for each gallon, or fraction thereof, of illicit alcoholic beverages not sold by the drink.

(b) A quantity of marijuana or other unauthorized substance is measured by the weight of the substance whether pure, impure or dilute, or by the number of dosage units in the dealer's possession when the substance is not sold by weight. A quantity of an unauthorized substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(c) For purposes of this part, a person constructively possesses an unauthorized substance when the person has:

(1) Knowledge of the unauthorized substance; and

(2) The ability and intention to exercise control over the unauthorized substance.

67-4-2804.

(a) The tax levied in this part does not apply to an unauthorized substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the unauthorized substance is authorized by law.

(b) The tax levied in this part does 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 subdivision (b)(1), 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.

67-4-2805.

(a) The commissioner shall issue stamps to affix to unauthorized substances to indicate payment of the tax by the dealer required by this part. Dealers shall report the taxes payable under this part at the time and on the form prescribed by the commissioner. 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 commissioner shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Every local law enforcement agency and every state law enforcement agency must report to the department of revenue within forty-eight (48) hours after seizing an unauthorized substance from or making an arrest of a dealer of unauthorized substances when the appropriate stamps as required by this part have not been affixed to the unauthorized substances. The report shall be in the manner prescribed by the commissioner and shall include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of any dealer and such dealer's social security number, and any other information prescribed by the commissioner.

67-4-2806.

(a) The tax imposed by this part pursuant to § 67-4-2803, evidenced by a stamp issued by the commissioner and permanently affixed to unauthorized substances pursuant to subsection (b), is payable by a dealer within forty-eight (48) hours after the dealer acquires actual or constructive possession of unauthorized substance on which a stamp has not been affixed, exclusive of Saturdays, Sundays, and legal holidays of this state, in which case the tax is payable on the next working day. If the tax is not paid within forty-eight (48)

hours, the tax shall become delinquent and shall accrue penalty and interest pursuant to the provisions of chapter 1, part 8 of this title.

(b) Upon payment of the tax and receipt of the tax stamps, the dealer shall permanently affix the appropriate stamps to the unauthorized substance.

(c) Once the tax due levied pursuant to this part has been paid, no additional tax is due and payable by a dealer in accordance with this part who may subsequently acquire or handle the unauthorized substance on which an appropriate stamp has been affixed.

(d) If a dealer is found in possession of a substance taxable under this part on which an appropriate stamp has not been affixed, it shall be presumed the dealer has been in possession of such substance for longer than forty-eight (48) hours, exclusive of Saturdays, Sundays, and legal holidays of this state.

67-4-2807. Notwithstanding any other law, an assessment against a dealer of unauthorized substance on which a stamp has not been affixed as required by this part shall be made as provided in this section. The commissioner shall assess the tax, applicable penalty, and interest based on any information brought to the attention of the commissioner, or the commissioner's duly authorized assistants, that a dealer is liable for unpaid tax pursuant to this part. The tax shall be assessed in the same manner as any other tax assessment, except when this part specifies otherwise. The commissioner shall notify the dealer in writing of the amount of the tax, penalty, and interest due. The notice of assessment shall 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 upon receipt of the notice of assessment, the commissioner shall collect the assessment, including penalty and interest, pursuant to the procedures set forth in chapter 1, part 14, of this title. The dealer may seek review of the assessment as

provided in chapter 1, part 18, of this title. Section 67-1-1802 is applicable to the tax levied by this part, except that a claim for refund shall be filed within six (6) months of the date of payment of the tax.

67-4-2808. Notwithstanding any other law to the contrary, information obtained pursuant to this part is confidential and may not be used in a criminal prosecution other than a prosecution for a violation of this part. Stamps issued pursuant to this part may not be used in a criminal prosecution other than a prosecution for a violation of this part. This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

67-4-2809.

(a) The commissioner shall credit the proceeds of the tax levied by this part to a special nonreverting account to be called the state unauthorized substances tax account, until the tax proceeds are unencumbered. The commissioner shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis.

(b)

(1) Tax proceeds are unencumbered when:

(A) The tax has been paid and the collection process completed;

and

(B)

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

(ii) The time for the taxpayer to file suit pursuant to § 67-1-1802(c) has expired.

(2)

(A) The commissioner shall first apply the unencumbered tax proceeds to the costs of storing and disposing of the assets seized in payment of the assessment under this part and then to the costs incurred by the commissioner due to implementation and enforcement of this part, which costs shall be added to and become part of the assessment.

(B)

(i) From the remaining proceeds, the commissioner shall remit seventy-five percent (75%) of the unencumbered tax proceeds that were collected by assessment to the state or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. Such proceeds are to be used by the agency solely for the purpose of investigating, combating, preventing, and reducing drug crimes.

(ii) If more than one (1) state or local law enforcement agency conducted the investigation, then the commissioner shall determine the equitable share for each agency based on the contribution each agency made to the investigation.

(iii) The commissioner's determination of the equitable share for each agency shall be final and shall not be subject to review in an administrative or judicial proceeding.

(C) The commissioner shall credit the remaining unencumbered tax proceeds to the general fund.

(c) Notwithstanding any other provision of this section, in the event the tax levied by this part is voluntarily paid to the department of revenue, and not as

a result of an investigation or arrest by a state or local law enforcement agency, such voluntarily paid tax shall be considered unencumbered upon payment, and the commissioner shall credit the entire tax proceeds to the general fund.

67-4-2810. The provisions of this part shall not be construed to confer any immunity from criminal prosecution or conviction for a violation of title 39, chapter 17, part 4, upon any person who voluntarily pays the tax imposed by this part or who otherwise complies with the provisions of this part.

67-4-2811. The commissioner shall have the authority to promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement, administer and enforce the provisions of this part.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.