

FIRST REGULAR SESSION

# HOUSE BILL NO. 926

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ROORDA (Sponsor), BRUNS AND MEADOWS (Co-sponsors).

Read 1st time February 21, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1590L.01I

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### AN ACT

To amend chapter 195, RSMo, by adding thereto six new sections relating to taxation of unauthorized substances.

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

Section A. Chapter 195, RSMo, is amended by adding thereto six new sections, to be known as sections 195.560, 195.561, 195.562, 195.563, 195.564, and 195.565, to read as follows:

**195.560. As used in sections 195.560 to 195.565, the following terms mean:**

- (1) "Controlled substance", any drug, substance, or immediate precursor placed in Schedules I through IV listed in this chapter. "Controlled substance" shall not include any drug, substance, or immediate precursor possessed by any person upon a prescription of an authorized practitioner;
- (2) "Dealer", any of the following:
- (a) Any person who actually or constructively possesses more than thirty-five grams of marijuana, one or more marijuana plants, seven or more grams of any other unauthorized substance that is sold by weight, or ten or more dosage units of any other unauthorized substance that is not sold by weight; or
- (b) A person who possesses an illicit alcoholic beverage for sale;
- (3) "Director", the director of the department of revenue;
- (4) "Illicit alcoholic beverage", any intoxicating liquor as defined in chapter 311, RSMo, or any nonintoxicating beer as defined in chapter 312, RSMo, that is unlawful

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 under chapter 311 or 312, RSMo. "Illicit alcoholic beverage" includes, but is not limited  
16 to, products known as "bootleg liquor", "moonshine", "nontax-paid liquor", and "white  
17 liquor";

18 (5) "Law enforcement agency", any state agency or department, any local police  
19 department, or any sheriff's office authorized to enforce criminal laws;

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

21 (a) Any anabolic steroid as defined in this chapter;

22 (b) Any depressant or stimulant substance as defined in this chapter;

23 (c) Any controlled substance with a hallucinogenic effect as described in this  
24 chapter;

25 (d) Any substance placed in Schedule V under this chapter;

26 (7) "Marijuana", all parts of the plant genus *Cannabis* in any species or form  
27 thereof, including, but not limited to *Cannabis Sativa* L., *Cannabis Indica*, *Cannabis*  
28 *Americana*, *Cannabis Ruderalis*, and *Cannabis Gigantea*, whether growing or not, the  
29 seeds thereof, the resin extracted from any part of the plant; and every compound,  
30 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It  
31 does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake  
32 made from the seeds of the plant, any other compound, manufacture, salt, derivative,  
33 mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber,  
34 oil or cake, or the sterilized seed of the plant which is incapable of germination;

35 (8) "Person", any individual, corporation, political subdivision, or other legal  
36 entity;

37 (9) "Unauthorized substance", any controlled substance or illicit alcoholic  
38 beverage, but shall not include any low-street-value drug.

195.561. 1. An excise tax is hereby levied on unauthorized substances possessed,  
2 either actually or constructively, by dealers at the following rates:

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

6 (2) Three dollars and fifty cents for each gram, or fraction thereof, of marijuana,  
7 other than separated stems and stalks taxed under subdivision (1) of this subsection or  
8 plants with foliage taxed under subdivision (3) of this subsection;

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

11 (4) Fifty dollars for each gram, or fraction thereof, of cocaine;

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

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

16           (7) Two hundred dollars for each ten dosage units, or fraction thereof, of any other  
17 controlled substance that is not sold by weight.

18           2. A quantity of marijuana or other unauthorized substance shall be measured by  
19 the weight of the substance whether pure, impure or dilute, or by the number of dosage  
20 units in the dealer's possession when the substance is not sold by weight. A quantity of an  
21 unauthorized substance shall be deemed dilute if it consists of a detectable quantity of pure  
22 controlled substance and any excipients or fillers.

23           3. An excise tax is hereby levied on illicit alcoholic beverages possessed by a dealer  
24 at the following rates:

25           (1) Thirty-one dollars and seventy cents for each gallon, or fraction thereof, of illicit  
26 alcoholic beverages sold by the drink; or

27           (2) Twelve dollars and eighty cents for each gallon, or fraction thereof, of illicit  
28 alcoholic beverages not sold by the drink.

29           4. For purposes of this section, a person constructively possesses an unauthorized  
30 substance when the person has knowledge of the substance and the ability and intention  
31 to exercise control over the substance.

32           5. The tax levied in this section shall not apply to a substance in the possession of  
33 a dealer who is authorized by law to possess the substance. This exemption shall apply  
34 only during the time the dealer's possession of the substance is authorized by law.

35           6. The tax levied in this section shall not apply to the following marijuana:

36           (1) Harvested mature marijuana stalks when separated from and not mixed with  
37 any other parts of the marijuana plant;

38           (2) Fiber or any other product of marijuana stalks described in subdivision (1) of  
39 this subsection, except resin extracted from the stalks;

40           (3) Marijuana seeds that have been sterilized and are incapable of germination; or

41           (4) Roots of the marijuana plant.

195.562. 1. The director shall issue stamps to affix to unauthorized substances to  
2 indicate payment of the tax required by sections 195.560 to 195.565. Dealers shall report  
3 the taxes payable at the time and on the form prescribed by the director. Dealers shall not  
4 be required to give their name, address, Social Security number, or other identifying  
5 information on the form. Upon payment of the tax, the director shall issue stamps in an

6 amount equal to the amount of the tax paid. Taxes shall be paid and stamps shall be issued  
7 either by mail or in person.

8       2. Every law enforcement agency shall report to the department of revenue within  
9 forty-eight hours after seizing an unauthorized substance, or making an arrest of an  
10 individual in possession of an unauthorized substance, listed in this subsection upon which  
11 a stamp has not been affixed. The report shall be in the manner prescribed by the director,  
12 and shall include the time and place of the arrest or seizure, the amount, location, and kind  
13 of substance, the identification of any individual in possession of the substance and such  
14 individual's Social Security number, and any other information prescribed by the director.  
15 The report shall be made when the arrest or seizure involves any of the following  
16 unauthorized substances upon which a stamp has not been affixed as required by sections  
17 195.560 to 195.565:

- 18       (1) More than thirty-five grams of marijuana;
- 19       (2) One or more marijuana plants;
- 20       (3) Any illicit alcoholic beverage;
- 21       (4) Seven or more grams of any other unauthorized substance that is sold by  
22 weight; or
- 23       (5) Ten or more dosage units of any other unauthorized substance that is not sold  
24 by weight.

25       3. Any report from any crime laboratory in the state relating to the testing,  
26 analysis, or identification of any unstamped unauthorized substance seized by any law  
27 enforcement agency shall be provided to the department of revenue within ten days of the  
28 laboratory's findings for the purposes of sections 195.560 to 195.565.

195.563. 1. The tax imposed under sections 195.560 to 195.565 shall be paid by any  
2 dealer who actually or constructively possesses an unauthorized substance in this state  
3 upon which the tax has not been paid as evidenced by a stamp issued by the director. The  
4 tax shall be paid within forty-eight hours after the dealer acquires actual or constructive  
5 possession of a nontax-paid unauthorized substance, exclusive of Saturdays, Sundays, and  
6 legal holidays of this state, in which case the tax shall be paid on the next business day. If  
7 the tax is not paid within forty-eight hours, the tax shall become delinquent and shall  
8 accrue penalties and any interest under section 32.065, RSMo. Upon payment of the tax,  
9 the dealer shall permanently affix the appropriate stamps to the unauthorized substance.  
10 Once the tax due on an unauthorized substance has been paid, no additional tax is due  
11 under sections 195.560 to 195.565 even though the unauthorized substance may be handled  
12 by other dealers. If a dealer is found in possession of a substance taxable under sections  
13 195.560 to 195.565 that does not have the appropriate tax stamp affixed, it shall be

14 presumed the dealer has been in possession of such substance for longer than forty-eight  
15 hours, exclusive of Saturdays, Sundays, and legal holidays of this state.

16 2. Notwithstanding any other provision of law to the contrary, an assessment  
17 against a dealer who possesses an unauthorized substance to which a stamp has not been  
18 affixed as required by sections 195.560 to 195.565 shall be made as provided in this section.  
19 The director shall immediately assess the tax, applicable penalty, and interest based on any  
20 information brought to the attention of the director, or the director's duly authorized  
21 assistants, that a person is liable for unpaid tax under sections 195.560 to 195.565. The tax  
22 shall be assessed in the same manner as any other tax assessment, except when sections  
23 195.560 to 195.565 specify otherwise. The director shall notify the dealer in writing of the  
24 amount of the tax, penalty, and interest due, and demand its immediate payment. The  
25 notice of assessment and demand for payment shall be either mailed to the dealer at the  
26 dealer's last known address or served on the dealer in person. If the dealer does not pay  
27 the tax, penalty, and interest immediately upon receipt of the notice and demand, the  
28 director shall collect the assessment, including penalty and interest, under the procedures  
29 in chapter 140, RSMo, unless the dealer files with the director sufficient security in the  
30 amount of the assessment, including penalty and interest. If security is not provided, the  
31 director shall use all means available to collect the assessment from any property in which  
32 the dealer has a legal, equitable, or beneficial interest. Any claim for a refund of the taxes  
33 paid shall be filed within six months of the date of payment of the tax.

195.564. 1. There is hereby created in the state treasury the "State Unauthorized  
2 Substances Tax Fund", which shall consist of moneys collected under sections 195.560 to  
3 195.565. The state treasurer shall be custodian of the fund and shall approve  
4 disbursements from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon  
5 appropriation, moneys in the fund shall be used solely for the administration of sections  
6 195.560 to 195.565. Notwithstanding the provisions of section 33.080, RSMo, to the  
7 contrary, any moneys remaining in the fund at the end of the biennium shall not revert to  
8 the credit of the general revenue fund. The state treasurer shall invest moneys in the fund  
9 in the same manner as other funds are invested. Any interest and moneys earned on such  
10 investments shall be credited to the fund.

11 2. The director shall credit the proceeds of the tax levied under sections 195.560 to  
12 195.565 to the state unauthorized substances tax fund until the tax proceeds are  
13 unencumbered. The state treasurer shall remit the unencumbered tax proceeds as  
14 provided in this section on a quarterly or more frequent basis.

15 3. (1) Tax proceeds shall be deemed unencumbered under this section when:

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

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

19           b. The time for the taxpayer to file suit for a refund has expired.

20           (2) The state treasurer shall first apply the unencumbered tax proceeds to the costs  
21 of storing and disposing of the assets seized in payment of the assessment under sections  
22 195.560 to 195.565, which costs shall be added to and become part of the assessment. From  
23 the remaining proceeds, the state treasurer shall remit twenty-five percent of the  
24 unencumbered tax proceeds that were collected by assessment to each of the following  
25 entities:

26           (a) The Missouri state highway patrol;

27           (b) Crime laboratories in this state;

28           (c) Multijurisdictional enforcement groups, as defined in this chapter;

29           (d) The department of revenue.  
30

31 Such proceeds shall be used by the entities described in this subdivision solely for the  
32 purpose of investigating, combating, preventing, and reducing drug-related crimes. If  
33 more than one law enforcement agency conducted the investigation, the director shall  
34 determine the equitable share for each agency based on the contribution each agency made  
35 to the investigation. The director's determination of the equitable share for each agency  
36 shall be final, and shall not be subject to review in an administrative or judicial proceeding.  
37 The state treasurer shall credit the remaining unencumbered tax proceeds to the general  
38 revenue fund.

39           4. Notwithstanding any other provision of this section to the contrary, in the event  
40 the tax levied under sections 195.560 to 195.565 is voluntarily paid to the department of  
41 revenue, and not as a result of an investigation or arrest by a law enforcement agency, such  
42 voluntarily paid tax shall be considered unencumbered upon payment, and the director  
43 shall credit the entire tax proceeds to the general revenue fund.

2           195.565. 1. The provisions of sections 195.560 to 195.565 shall not be construed to  
3 confer any immunity from criminal prosecution or conviction for a violation of sections  
4 195.005 to 195.425 upon any person who voluntarily pays the tax imposed under sections  
5 195.560 to 195.565 or who otherwise complies with sections 195.560 to 195.565.

6           2. Notwithstanding any other provision of law to the contrary, information  
7 obtained under sections 195.560 to 195.565 shall be confidential and, unless independently  
8 obtained, shall not be used in a criminal prosecution other than a prosecution for a  
9 violation of sections 195.560 to 195.565. Stamps issued under sections 195.560 to 195.565  
shall not be used in a criminal prosecution other than a prosecution for a violation of

10 sections 195.560 to 195.565. Nothing in this section nor section 32.057, RSMo, shall be  
11 construed to prohibit the director from publishing statistics that do not disclose the identity  
12 of dealers or the contents of particular returns or reports.

13 3. There is hereby established a commission to review the rates of the tax levied  
14 under sections 195.560 to 195.565 and to make recommendations concerning increases in  
15 the rate of the tax to the general assembly. The commission shall be known as the  
16 "Unauthorized Substance Tax Commission", and shall consist of five members as follows:

- 17 (1) The superintendent of the Missouri state highway patrol;  
18 (2) The director of the Missouri state highway patrol crime laboratory;  
19 (3) The director of the department of revenue;  
20 (4) Two members who are employees of any county or municipal law enforcement  
21 agency, to be appointed by the governor.

22  
23 Of the initial members appointed by the governor, one shall hold office for one year, and  
24 one shall hold office for two years. Members appointed after expiration of the initial terms  
25 shall be appointed to a two-year term. Each member may be reappointed. Vacancies shall  
26 be filled by appointment by the governor for the remainder of the unexpired term. The  
27 members shall not receive compensation for their services, but may be reimbursed for their  
28 actual and necessary expenses incurred in service of the commission.

29 4. The department of revenue may promulgate rules to implement the provisions  
30 of sections 195.560 to 195.565. Any rule or portion of a rule, as that term is defined in  
31 section 536.010, RSMo, that is created under the authority delegated in this section shall  
32 become effective only if it complies with and is subject to all of the provisions of chapter  
33 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,  
34 RSMo, are nonseverable and if any of the powers vested with the general assembly under  
35 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule  
36 are subsequently held unconstitutional, then the grant of rulemaking authority and any  
37 rule proposed or adopted after August 28, 2007, shall be invalid and void.

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