

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/16/07

A Bill

HOUSE BILL 1422

5 By: Representative Sumpter
6
7

For An Act To Be Entitled

9 AN ACT TO IMPOSE AN EXCISE TAX UPON THE USE,
10 POSSESSION, CONSUMPTION, STORAGE, OR TRANSFER OF
11 A CONTROLLED SUBSTANCE; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT TO IMPOSE AN EXCISE TAX UPON THE
15 USE, POSSESSION, CONSUMPTION, STORAGE,
16 OR TRANSFER OF A CONTROLLED SUBSTANCE.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 26, Chapter 57 is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 14 – Excise Tax on Controlled Substances Act.

24 26-57-1401. Title.

25 This subchapter shall be known as the "Excise Tax on Controlled
26 Substances Act".
27

28 26-57-1402. Definitions.

29 As used in this subchapter, "controlled substance" means:

30 (1) A drug, substance, or immediate precursor in Schedules I
31 through VI of the Schedules of Controlled Substances as provided in the
32 Uniform Controlled Substances Act, § 5-64-101 et seq., and rules promulgated
33 by the Director of the Division of Health of the Department of Health and
34 Human Services; and

35 (2) A "counterfeit substance" as defined by § 5-64-101.
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1 26-57-1403. No immunity – Unlawful use not authorized.

2 (a) This subchapter does not provide any immunity for any person from
3 criminal prosecution under a law of this state.

4 (b) This subchapter does not authorize the unlawful use, possession,
5 consumption, storage, or transfer of a controlled substance.

6
7 26-57-1404. Imposition of tax.

8 (a)(1) In addition to any other applicable tax, there is imposed an
9 excise tax upon each use, possession, consumption, storage, or transfer of a
10 controlled substance.

11 (2) Each person that uses, possesses, consumes, stores, or
12 transfers a controlled substance is liable for the excise tax imposed by this
13 subchapter.

14 (b) The excise tax imposed by this subchapter applies regardless of
15 whether the controlled substance exists in solid, liquid, or gaseous form and
16 regardless of the degree of purity of the controlled substance.

17
18 26-57-1405. Exemptions.

19 (a) A licensed pharmacist is exempt from the excise tax imposed by
20 this subchapter when he or she is lawfully using, possessing, storing, or
21 transferring a controlled substance.

22 (b) A health care professional with prescriptive authority is exempt
23 from the excise tax imposed by this subchapter when he or she is lawfully
24 using, possessing, storing, or transferring a controlled substance.

25 (c) A person that is lawfully in possession of a controlled substance
26 pursuant to a valid prescription is exempt from the excise tax imposed by
27 this subchapter when he or she is lawfully using, possessing, consuming, or
28 storing a controlled substance.

29 (d) A business entity that is lawfully engaged in the manufacturing,
30 warehousing, or shipping of a controlled substance is exempt from the excise
31 tax imposed by this subchapter when the business entity is lawfully using,
32 possessing, storing, or transferring a controlled substance.

33 (e) A veterinarian is exempt from the excise tax imposed by this
34 subchapter when he or she is lawfully using, possessing, storing, or
35 transferring a controlled substance.

36

1 26-57-1406. Calculation of excise tax – Rates.

2 (a) For the purpose of calculating the excise tax imposed by this
3 subchapter, a quantity of a controlled substance in a person's possession
4 shall be measured by:

5 (1) The weight of the controlled substance whether pure, impure,
6 or dilute; or

7 (2) Dosage units when the controlled substance is not typically
8 sold by weight.

9 (b) The excise tax shall be levied, collected, computed, and paid at
10 the following rates:

11 (1) Three dollars and fifty cents (\$3.50) on each gram or each
12 portion of a gram of marijuana;

13 (2) Two hundred dollars (\$200) on each gram or each portion of a
14 gram of a controlled substance that is sold by weight other than marijuana;
15 and

16 (3) Four hundred dollars (\$400) on ten (10) dosage units or a
17 fractional portion of a ten (10) dosage unit of a controlled substance that
18 is not typically sold by weight.

19
20 26-57-1407. Time for payment of excise tax – Forms.

21 (a)(1) Except as provided in subdivision (a)(2) of this section, the
22 excise tax imposed by this subchapter is due and payable at the time of each
23 use, possession, consumption, storage, or transfer of a controlled substance.

24 (2) A person liable to pay the excise tax may report and remit
25 the amount of excise tax which is due, using a reporting form prepared by the
26 Director of the Department of Finance and Administration, no later than the
27 twentieth day of the calendar month following the month in which the excise
28 tax liability is incurred.

29 (b) The reporting procedure provided for in subdivision (a)(2) of this
30 section does not prevent the director from assessing or collecting any excise
31 tax due prior to receiving the reporting form or remittance of the excise
32 tax.

33
34 26-57-1408. Enforcement and administration.

35 (a) The Director of the Department of Finance and Administration shall
36 promulgate rules to administer this subchapter.

1 (b) The director shall provide the reporting forms necessary for
2 reporting the excise tax due under this subchapter and shall enforce and
3 collect the excise tax pursuant to the Arkansas Tax Procedure Act, § 26-18-
4 101 et seq.

5
6 26-57-1409. Confidentiality of information – Penalty.

7 (a)(1) Except as provided in subdivisions (a)(2) and (3) of this
8 section, neither the Director of the Department of Finance and Administration
9 nor a public employee may disclose:

10 (A) Any fact contained in a report, form, or return
11 required by this subchapter; or

12 (B) Any information obtained from a person pursuant to
13 this subchapter.

14 (2)(A) Any fact or information described in subdivision (a)(1)
15 of this section obtained from a person may not be used against the person in
16 any criminal proceeding unless independently obtained.

17 (B) Any fact or information described in subdivision
18 (a)(1) of this section obtained from a person may be used in connection with
19 a proceeding involving taxes due under this subchapter from the person.

20 (3) The director may publish statistics that do not disclose
21 the:

22 (A) Identity of any person who submitted information under
23 this subchapter; or

24 (B) Contents of a report, form, or return required by this
25 subchapter.

26 (b) Upon conviction, any person who knowingly discloses facts or
27 information in violation of subsection (a) of this section is guilty of a
28 Class A misdemeanor.

29
30 26-57-1410. Forfeiture law not superseded.

31 This subchapter does not supersede § 5-5-101 et seq. or § 5-64-505.

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33 26-57-1411. Disposition of taxes, interest, and penalties.

34 (a)(1) Twenty-five percent (25%) of any tax, interest, penalty, or
35 cost received by the Director of the Department of Finance and Administration
36 under this subchapter shall be general revenues and shall be deposited into

1 the State Treasury to the credit of the State Apportionment Fund.

2 (2) The Treasurer of State shall allocate and transfer any tax,
3 interest, penalty, or cost received under subdivision (a)(1) of this section
4 to the various State Treasury funds participating in general revenues in the
5 respective proportions to each fund as provided in the Revenue Stabilization
6 Law of Arkansas, § 19-5-101 et seq., and to be used in each fund for the
7 respective purposes set forth in the Revenue Stabilization Law of Arkansas, §
8 19-5-101 et seq.

9 (b)(1) Seventy-five percent (75%) of any tax, interest, penalty, or
10 cost received by the director under this subchapter shall be classified as
11 special revenues and shall be deposited into the State Treasury.

12 (2) After deducting the amount to be credited to the
13 Constitutional Officers Fund and the State Central Services Fund as provided
14 under the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of
15 State shall transfer on the last business day of each month the balance of
16 the amount received under subdivision (b)(1) of this section to the Excise
17 Tax on Controlled Substances Fund.

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19 SECTION 2. Arkansas Code Title 19, Chapter 6, Subchapter 8 is amended
20 to add an additional section to read as follows:

21 19-6-805. Excise Tax on Controlled Substances Fund.

22 (a) There is created on the books of the Treasurer of State, the
23 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
24 fund to be known as the "Excise Tax on Controlled Substances Fund".

25 (b)(1) All moneys collected under § 26-57-1411(b) shall be deposited
26 into the State Treasury to the credit of the fund as special revenues.

27 (2) The fund shall also consist of any other revenues as may be
28 authorized by law.

29 (c) The fund shall be used by the Director of the Department of
30 Finance and Administration to:

31 (1) Pay the costs of storing and disposing of any assets seized
32 in payment of an assessment under the Excise Tax on Controlled Substances
33 Act, § 26-57-1401 et seq.; and

34 (2)(A) Remit the balance of proceeds collected by an assessment
35 under the Excise Tax on Controlled Substances Act, § 26-57-1401 et seq. to
36 the state or local law enforcement agency that conducted the investigation of

1 the person liable to pay the excise tax that led to the assessment.

2 (B) The proceeds described in subdivision (c)(2)(A) of
3 this section are to be used by the law enforcement agency solely for the
4 purpose of investigating, combating, preventing, and reducing drug crimes.

5 (C)(i) If more than one (1) state or local law enforcement
6 agency conducted the investigation described in subdivision (c)(2)(A) of this
7 section, the director shall determine the equitable share for each law
8 enforcement agency based on the contribution each law enforcement agency made
9 to the investigation.

10 (ii) The director's determination under subdivision
11 (c)(2)(C)(i) of this section is final and is not subject to review in an
12 administrative or judicial proceeding.

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14 /s/ Sumpter
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