

LEGISLATIVE BILL 260

Approved by the Governor April 4, 1990

Introduced by Conway, 17; Baack, 47; Schmit, 23;
Abboud, 12

AN ACT relating to revenue and taxation; to amend section 77-3906, Reissue Revised Statutes of Nebraska, 1943; to provide for a tax on marijuana and controlled substances; to define terms; to provide powers and duties for the Tax Commissioner and Department of Revenue relating to the collection and enforcement of such tax as prescribed; to harmonize provisions; to provide penalties; to provide an operative date; to provide severability; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 16 of this act:

(1) Controlled substance shall mean any drug or substance, including an imitation controlled substance, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Nebraska law. Controlled substance shall not include marijuana.

(2) Dealer shall mean a person who, in violation of Nebraska law, manufactures, produces, ships, transports, or imports into Nebraska, or in any manner acquires or possesses six or more ounces of marijuana, seven or more grams of any controlled substance which is sold by weight, or ten or more dosage units of any controlled substance which is not sold by weight.

(3) Imitation controlled substance shall have the meaning as provided in section 28-401; and

(4) Marijuana shall have the meaning as provided in section 28-401.

Sec. 2. No dealer may possess marijuana or controlled substances upon which a tax is imposed by section 3 of this act unless the tax has been paid on the marijuana or controlled substance as evidenced by an official stamp, label, or other indicium.

Sec. 3. (1) A tax is hereby imposed on marijuana and controlled substances at the following rates:

(a) On each ounce of marijuana or each portion of an ounce, one hundred dollars;

(b) On each gram or portion of a gram of a controlled substance that is customarily sold by weight, one hundred fifty dollars; or

(c) On each fifty dosage units or portion thereof of a controlled substance that is not customarily sold by weight, five hundred dollars.

(2) For purposes of calculating the tax under this section, marijuana or any controlled substance that is customarily sold by weight shall be measured by the weight of the substance in the dealer's possession.

(3) The tax shall not be imposed upon a person registered or otherwise lawfully in possession of marijuana or a controlled substance pursuant to Chapter 28, article 4.

Sec. 4. (1) Subject to the rules and regulations of the Tax Commissioner, official stamps, labels, or other indicia to be affixed to all marijuana and controlled substances shall be purchased from the Department of Revenue. The purchaser shall pay one hundred percent of face value for each official stamp, label, or other indicium purchased and shall not be required to give his or her name, address, social security number, or other identifying information.

(2) The Tax Commissioner shall adopt a uniform system of providing, affixing, and displaying an official stamp, label, or other indicium for marijuana and controlled substances on which a tax is imposed. Official stamps, labels, or other indicia shall expire six months from the date of issuance.

Sec. 5. The tax imposed upon marijuana and controlled substances by section 3 of this act shall be due and payable immediately upon acquisition or possession of marijuana and controlled substances in this state by a dealer.

Sec. 6. If a dealer acquires or ships, transports, or imports into this state marijuana or a controlled substance and if the official stamp, label, or indicium evidencing the payment of the tax has not already been affixed, the dealer shall have it permanently affixed on the marijuana or controlled substance immediately upon acquisition or possession of the marijuana or controlled substance. Each official stamp, label, or other indicium may be used only once.

Sec. 7. The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out sections 1 to 16 of this act.

Sec. 8. Nothing in sections 1 to 16 of this

act shall in any manner provide immunity for a dealer from criminal prosecution pursuant to Nebraska law.

Sec. 9. Any dealer violating sections 1 to 16 of this act shall be subject to a penalty of one hundred percent of the tax in addition to the tax imposed by section 3 of this act. The penalty shall be collected as part of the tax.

A dealer distributing or possessing marijuana or a controlled substance without affixing the official stamp, label, or other indicium shall be guilty of a Class IV felony. Notwithstanding any other provision of the criminal laws of this state, an indictment may be found and filed or an information or complaint filed upon any criminal offense specified in this section in the proper court within six years after the commission of such offense.

Sec. 10. The Tax Commissioner shall (1) based on personal knowledge or information available to the commissioner, assess the tax and applicable penalties upon any dealer subject to tax under section 2 of this act who has not paid the tax when due, (2) mail to the dealer at the dealer's last-known address as shown by the records of the Tax Commissioner or serve in person a written notice of the determination under section 11 of this act, (3) demand immediate payment of the tax, and (4) if payment is not immediately made, collect the tax and penalties by any method prescribed in the Uniform State Tax Lien Registration and Enforcement Act as limited by section 12 of this act.

Sec. 11. Notice of a determination that the tax imposed under section 3 of this act is due and owing shall be personally served or mailed to the dealer within six years after the Tax Commissioner knows or has information available to make such determination. A determination that a dealer does not possess an official stamp, label, or other indicium showing that the tax imposed by section 3 of this act has been paid or has not paid the tax imposed by section 3 of this act shall be considered a jeopardy determination. In any proceedings in court brought to enforce payment of taxes and applicable penalties under sections 1 to 16 of this act, a jeopardy determination, made with or without notice to the dealer, shall be for all purposes prima facie evidence of the dealer's failure to pay such taxes.

Sec. 12. (1) The person against whom a jeopardy determination is made may petition for a hearing pursuant to the Administrative Procedure Act.

(2)(a) When a jeopardy determination or any

other final determination has been made by the Tax Commissioner, the property seized for collection of the taxes and any penalty shall not be sold until the time has expired for filing an appeal. If an appeal has been filed, no sale shall be made unless the taxes and any penalty remain unpaid for a period of more than thirty days after final determination of the appeal by the district court.

(b) Notwithstanding subdivision (a) of this subsection, seized property may be sold if the taxpayer consents in writing to the sale or the Tax Commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping or that such property cannot be kept without great expense.

(c) The property seized shall be returned by the Tax Commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the Tax Commissioner, or deposits with the Tax Commissioner security in such form and amount as the Tax Commissioner deems necessary to insure payment of the liability but not more than twice the liability.

(d) Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(e) Any action taken by the Tax Commissioner pursuant to this section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

(f) After the Tax Commissioner has seized the property of any person, that person may, upon giving forty-eight hours notice to the Tax Commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court deems equitable.

(3) If the taxpayer is not within this state or has departed from the state and ignores all demands for payment, the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Sec. 13. No person may bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by sections 1 to 16 of this act.

Sec. 14. The tax and penalties assessed by the Tax Commissioner shall be presumed to be valid and correctly determined and assessed. The burden shall be upon the taxpayer to show their incorrectness or invalidity. Any statement or any other certificate by the Tax Commissioner of the amount of tax and penalties determined or assessed shall be admissible in evidence and shall be prima facie evidence of the facts it contains.

Sec. 15. Neither the Tax Commissioner nor a public employee may reveal facts contained in a report required by sections 1 to 16 of this act. Information contained in any report required by the Tax Commissioner shall not be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due from the taxpayer making the report. Official stamps, labels, or other indicia denoting payment of the tax imposed by section 3 of this act shall not be used against the dealer in any criminal proceeding.

Sec. 16. For purposes of determining the correctness of any report, determining the amount of tax that should have been paid, determining whether or not the dealer should have made a report or paid taxes, or collecting any taxes under sections 1 to 16 of this act, the Tax Commissioner may examine or cause to be examined any books, papers, records, or memoranda that may be relevant to making such determinations, whether the books, papers, records, or memoranda are the property of or in the possession of the dealer or another person. The Tax Commissioner may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon request of the Tax Commissioner, the judge of any court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, and memoranda. The Tax Commissioner may also issue subpoenas. Disobedience of subpoenas issued under this section shall be punishable by the district court of the county in which the subpoena is issued or, if the subpoena is issued by the Tax Commissioner, by the district court of the county in which the party served with the subpoena is located, in the same manner as contempt of district court.

Sec. 17. That section 77-3906, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

77-3906. (1) In addition to all other remedies or actions provided by law under any tax program administered by the Tax Commissioner, it shall be lawful for the Tax Commissioner, after making demand for payment, to collect any delinquent taxes, together with any interest, penalties, and additions to such tax by distraint and sale of the real and personal property of the taxpayer. If the Tax Commissioner finds that the collection of any tax is in jeopardy pursuant to section 77-2710 or 77-27,111 or section 11 of this act, notice and demand for immediate payment of such tax may be made by the Tax Commissioner and, upon failure or refusal to pay such tax, collection by levy shall be lawful.

(2) In case of failure to pay taxes or deficiencies, the Tax Commissioner or his or her authorized employee may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Department of Revenue to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability, ~~except exempt property~~, for the payment of the amount due. As used in this section, exempt property shall mean such property as is exempt from execution under the laws of this state.

(3) When a warrant is issued or a levy is made by the Tax Commissioner or his or her duly authorized employee for the collection of any tax and any interest, penalty, or addition to such tax imposed by law under any tax program administered by the Tax Commissioner or for the enforcement of any tax lien authorized by the Uniform State Tax Lien Registration and Enforcement Act, such warrant or levy shall have the same force and effect of a levy and sale pursuant to a writ of execution. Such warrant or levy may be issued and sale made pursuant to it in the same manner and with the same force and effect of a levy and sale pursuant to a writ of execution. The Tax Commissioner shall pay the levying sheriff the same fees, commissions, and expenses pursuant to such warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publications in a newspaper shall be subject to approval by the Tax Commissioner. Such fees, commissions, and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant shall show the name and last-known address of the taxpayer, the identity of the tax program, the year for which such tax

and any interest, penalty, or addition to such tax is due and the amount thereof, the fact that the Tax Commissioner has complied with all provisions of the law for the applicable tax program which he or she administers in the determination of the amount required to be paid, and that the tax and any interest, penalty, or addition to such tax is due and payable according to law.

(4) Notice of the sale and the time and place of the sale shall be given, to the delinquent taxpayer and to any other person with an interest in the property who has filed for record with the appropriate filing officer on such property, in writing at least twenty days prior to the date of such sale in the following manner: The notice shall be sent by certified mail, return receipt requested, to the taxpayer and to any other person with such interest at his or her last-known residence or place of business in this state. The notice shall also be published for ten days prior to the date of the sale in the newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date of the sale. The notice shall contain a description of the property to be sold, a statement of the type of tax due and of the amount due, including interest, penalties, additions to tax, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, additions to tax, and costs, is paid on or before the time fixed in the notice for the sale or such security as may be determined by the Tax Commissioner is placed with the Tax Commissioner or his or her duly authorized representative on or before such time, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(5) At the sale the Tax Commissioner or his or her duly authorized representative shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized shall remain in the custody and control of the Tax Commissioner or his or her duly authorized representative until offered for sale again in accordance with this section or redeemed by the

taxpayer.

(6) Whenever any property which is seized and sold under this section is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff or duly authorized employee of the Department of Revenue may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists until the amount due from such taxpayer, together with all expenses, is fully paid.

(7) If after the sale the money received exceeds the total of all amounts due the state, including any interest, penalties, additions to tax, and costs, and if there is no other interest in or lien upon such money received, the Tax Commissioner shall return the excess to the person liable for the amounts and obtain a receipt. If any person having an interest or lien upon the property files with the Tax Commissioner prior to the sale notice of his or her interest or lien, the Tax Commissioner shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount or his or her heirs, successors, or assigns. No interest earned, if any, shall become the property of the person liable for the amount.

(8) All persons and officers of companies or corporations shall, on demand of a sheriff or duly authorized employee of the Department of Revenue about to distraint or having distrained any property or right to property, exhibit all books containing evidence or statements relating to the property or rights of property liable to distraint for the tax due.

Sec. 18. This act shall become operative on January 1, 1991, except that necessary actions preparatory to its implementation may be taken prior to such date.

Sec. 19. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 20. That original section 77-3906, Reissue Revised Statutes of Nebraska, 1943, is repealed.