



1997 ASSEMBLY BILL 512

September 16, 1997 - Introduced by Representatives FOTI, MUSSER, DUFF, LA FAVE, STASKUNAS, PLALE, HAHN, GOETSCH, OTT, GREEN, ZIEGELBAUER, DOBYNS and HUBER, cosponsored by Senators RUDE and ROESSLER. Referred to Committee on Ways and Means.

1 **AN ACT** *to renumber and amend* 139.91 and 139.96; and *to create* 20.566 (1)
2 (gm), 139.95 (4) and 139.96 (2) of the statutes; **relating to:** the occupational tax
3 on dealers of controlled substances, making an appropriation and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Current law provides for an occupational tax on dealers of controlled substances. A "dealer" is a person who unlawfully possesses, manufactures, produces, transports, delivers, distributes or transfers to another person certain minimum amounts of certain controlled substances, including marijuana, cocaine, psilocin, psilocybin and lysergic acid diethylamide. A dealer of controlled substances may not possess a controlled substance unless he or she pays to the department of revenue (DOR) an occupational tax that is based on the amount of controlled substance the dealer possesses.

Under current law, a dealer who pays the occupational tax is issued a stamp or other evidence of payment by DOR. A dealer who possesses controlled substances that do not bear evidence that the occupational tax has been paid must pay a penalty equal to the tax due and may also be fined not more than \$10,000 or imprisoned for not more than 5 years or both. Currently, if DOR collects occupational taxes, penalties and interest from a dealer as a result of an arrest, DOR must pay those occupational taxes, penalties and interest to the state or local law enforcement agency that made the arrest associated with the revenue.

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Current law includes provisions concerning the confidentiality of dealers who pay the occupational tax and the confidentiality of information obtained by DOR in administering the occupational tax. Specifically, current law provides that dealers may not be required to provide any identifying information in connection with the purchase of stamps or other evidence of payment. Current law also prohibits DOR from revealing facts obtained in administering the occupational tax other than statistics that do not reveal the identities of dealers. In addition, under current law no information obtained by DOR in administering the occupational tax on dealers may be used against a dealer in any criminal proceeding unless that information has been independently obtained, except that information obtained by DOR may be used in connection with a proceeding involving possession of controlled substances on which the occupational tax has not been paid or in connection with occupational taxes owed by a dealer. A person who violates the prohibition against revealing facts obtained by DOR in administering the occupational tax may be subject to a forfeiture (a civil monetary penalty) of not more than \$200.

In *State v. Hall*, 207 Wis. 2d 54 (1997), the supreme court held that the occupational tax on dealers of controlled substances is unconstitutional. Specifically, the court found that the current occupational tax on dealers violates the state and federal constitutional privileges against compelled self-incrimination because the confidentiality provisions of current law fail to protect a dealer from all uses of the information that is compelled from a dealer complying with the law.

This bill makes the following changes in the current occupational tax on dealers of controlled substances:

1. To remedy the constitutional problem identified by the supreme court in *Hall*, the bill expands the confidentiality provisions relating to the occupational tax on dealers. The bill provides that no information obtained from a dealer as a result of the dealer's compliance with the occupational tax may be used against the dealer in any criminal proceeding unless that information has been independently obtained, except that information obtained by DOR may be used in connection with a proceeding involving occupational taxes due from the dealer. Thus, under the bill, the confidentiality requirements apply to any information obtained from a dealer complying with the occupational tax (and not only to information obtained by DOR) and to proceedings involving possession of controlled substances on which the occupational tax has not been paid.

2. The bill increases the penalty for violating the prohibition against revealing facts obtained by DOR in administering the occupational tax. Under the bill, a person who violates the prohibition may be fined not more than \$1,000 or imprisoned for not more than 60 days or both.

3. The bill provides that when DOR collects taxes, penalties and interest as a result of an arrest, it must retain from the revenue collected an amount equal to the actual costs related to the administration of the occupational tax on dealers and then pay the balance to the state or local law enforcement agency that made the arrest associated with the revenue. The bill specifies that no later than November 1 of each year, DOR must review the costs incurred in the previous fiscal year in administering the occupational tax on dealers and must adjust the amount it retains from

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collections made as the result of an arrest so that the amount retained reflects DOR's actual costs.

The bill also makes dealers ineligible for refunds for taxes, interest and penalties they have paid.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.566 (1) (gm) of the statutes is created to read:

2 20.566 (1) (gm) *Administration of tax on controlled substances dealers.* From
3 moneys received from the collection of taxes, penalties and interest from dealers of
4 controlled substances under s. 139.96, the amounts in the schedule to pay the costs
5 of the department of revenue in administering subch. IV of ch. 139.

6 **SECTION 2.** 139.91 of the statutes is renumbered 139.91 (1) and amended to
7 read:

8 139.91 (1) The department may not reveal facts obtained in administering this
9 subchapter, except that the department may publish statistics that do not reveal the
10 identities of dealers. ~~Dealers~~

11 (2) The department may not be required require dealers to provide any
12 identifying information in connection with the purchase of stamps.

13 (3) No information obtained by the department from a dealer as a result of the
14 dealer's compliance with this subchapter may be used against a the dealer in any
15 criminal proceeding unless that information has been independently obtained,
16 except in connection with a proceeding involving possession of schedule I controlled
17 substances or schedule II controlled substances on which the tax has not been paid
18 or in connection with taxes due under s. 139.88 from the dealer.

19 **SECTION 3.** 139.95 (4) of the statutes is created to read:

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1 139.95 (4) Any person who violates s. 139.91 (1) may be fined not more than
2 \$1,000 or imprisoned for not more than 60 days or both.

3 **SECTION 4.** 139.96 of the statutes is renumbered 139.96 (1) and amended to
4 read:

5 139.96 (1) If taxes, penalties and interest are collected under this subchapter
6 as a result of an arrest, the department of revenue shall pay the taxes, penalties and
7 interest, less the charge for administrative costs under sub. (2), to the state or local
8 law enforcement agency that made the arrest associated with the revenue.

9 **SECTION 5.** 139.96 (2) of the statutes is created to read:

10 139.96 (2) The department shall retain a portion of taxes, penalties and
11 interest collected under this sub. (1) that is equal to the actual costs related to the
12 administration of this subchapter. No later than November 1 of each year, the
13 department shall review the costs of administering this subchapter incurred in the
14 previous fiscal year and shall adjust its charge under sub. (1) to reflect those costs.

15 **SECTION 6. Nonstatutory provisions; revenue.**

16 (1) DRUG TAX. The legislature intends that, irrespective of the constitutionality
17 of the affix and display requirements under section 139.89 of the statutes and the
18 rules that interpret that section, all other civil and administrative procedures that
19 are related to the civil obligation to pay the tax, interest and penalties required under
20 subchapter IV of chapter 139 of the statutes are severable from those affix and
21 display requirements and are to remain in full force and effect. To the extent
22 necessary to effectuate the legislature's intent, the civil obligation to pay the tax,
23 interest and penalties required under subchapter IV of chapter 139 of the statutes
24 is retroactively reimposed beginning with the effective date under 1989 Wisconsin
25 Act 122, section 3203 (48) (a).

