

HOUSE BILL NO. 791

INTRODUCED BY STRIZICH, NISBET, WHALEN, RAMIREZ, ROTH,
CODY, MANNING, BACHINI, SCHYE, MENAHAN, GAGE, MILLER,
BRANDEWIE, SQUIRES, MILES, MANUEL, GIACOMETTO, D. BROWN,
DARKO, DRISCOLL, DEMARS, WALKER, COMPTON, RANEY, THOMAS,
POULSEN, MCCORMICK, PISTORIA, PHILLIPS

IN THE HOUSE

FEBRUARY 17, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

MARCH 13, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

 STATEMENT OF INTENT ADOPTED.

MARCH 14, 1987 PRINTING REPORT.

MARCH 16, 1987 SECOND READING, DO PASS.

MARCH 17, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 92; NOES, 3.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 18, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 31, 1987 SECOND READING, CONCURRED IN.

APRIL 1, 1987 ON MOTION, TAKEN FROM THIRD READING
AND PLACED ON SECOND READING.

APRIL 2, 1987 SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 3, 1987

THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *House* BILL NO. *791* *Craig*
 2 INTRODUCED BY *Angela Nisbet Whalen (Sinning)*
 3 *Richard E. Manning Benjamin Edge Mancha DMP Manuel*
 4 *Miller Dan Lewis Aquino Miles*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A TAX ON *DeMaun*
 6 THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING FOR *Thomas Coulson*
 7 THE ASSESSMENT AND COLLECTION OF THE TAX; AND PROVIDING FOR *Phillips*
 8 DISPOSITION OF THE TAX COLLECTED."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. This act may be cited as the
11 "Dangerous Drug Tax Act".

12 Section 2. Definitions. As used in [this act], unless
13 the context requires otherwise, the following definitions
14 apply:

15 (1) "Dangerous drug" has the meaning provided in
16 50-32-101.

17 (2) "Department" means the department of revenue
18 provided for in 2-15-1301.

19 (3) "Person" means an individual, firm, association,
20 corporation, partnership, or any other group or combination
21 acting as a unit.

22 Section 3. Tax on dangerous drugs. (1) There is a tax
23 on the possession and storage of dangerous drugs. Except as
24 provided in [section 4], each person possessing or storing
25 dangerous drugs is liable for the tax. The tax imposed is

1 determined pursuant to subsection (2). The tax is due and
2 payable on the date of assessment. The department shall add
3 an administration fee of 1% of the tax imposed pursuant to
4 subsection (2) to offset costs incurred in assessing value,
5 in collecting the tax, and in any review and appeal process.

6 (2) The tax on possession and storage of dangerous
7 drugs is the greater of:

8 (a) 10% of the assessed market value of the drugs, as
9 determined by the department, or:

10 (b) (i) \$100 per ounce of marijuana, as defined in
11 50-32-101, or its derivatives, as determined by the
12 aggregate weight of the substance seized;

13 (ii) \$250 per ounce of hashish, as defined in
14 50-32-101, as determined by the aggregate weight of the
15 substance seized;

16 (iii) \$200 per gram of any substance containing or
17 purported to contain any amount of a dangerous drug included
18 in Schedule I pursuant to 50-32-222(1), (2), (4), and (5),
19 or Schedule II pursuant to 50-32-224(1) through (4), as
20 determined by the aggregate weight of the substance seized;

21 (iv) \$10 per 100 micrograms of any substance containing
22 or purported to contain any amount of lysergic acid
23 diethylamide (LSD) included in Schedule I pursuant to
24 50-32-222(3), as determined by the aggregate weight of the
25 substance seized;



-2- INTRODUCED BILL
HB-791

1 (v) \$100 per ounce of any substance containing or
 2 purported to contain any amount of an immediate precursor as
 3 defined under Schedule II pursuant to 50-32-224(5), as
 4 determined by the aggregate weight of the substance seized;
 5 and

6 (vi) \$100 per gram of any substance containing or
 7 purported to contain any amount of dangerous drug not
 8 otherwise provided for in this subsection (2).

9 (3) The tax imposed pursuant to this section must be
 10 collected only after any state or federal forfeitures have
 11 been satisfied.

12 Section 4. Exemptions. The tax imposed pursuant to
 13 [section 3] does not apply to any person authorized by state
 14 or federal law to possess or store dangerous drugs. The
 15 burden of proof of an exemption from [section 3] is on the
 16 person claiming it.

17 Section 5. Statement of tax. A written statement of
 18 the assessment and tax due under [section 3] must be
 19 presented to the taxpayer by the department.

20 Section 6. Tax appeal. A person aggrieved by an
 21 assessment pursuant to [section 3] or an exemption decision
 22 pursuant to [section 4] may appeal the assessment or
 23 exemption decision pursuant to Title 15, chapter 2, part 3.

24 Section 7. Tax lien. The tax imposed pursuant to
 25 [section 3], together with interest and penalties, is a lien

1 in favor of the state as provided in Title 15, chapter 16,
 2 part 4. The lien attaches at the time the tax is assessed
 3 and is enforceable in the same manner as other tax liens.

4 Section 8. Accounts. (1) There is an institutions
 5 evaluation special revenue account within the state
 6 treasury. One-half of the taxes collected under [section 9]
 7 shall be deposited in the account.

8 (2) There is a chemical abuse assessment special
 9 revenue account within the state treasury. One-half of the
 10 taxes collected under [section 9] shall be deposited in the
 11 account.

12 Section 9. Disposition of proceeds. The department
 13 shall transfer all taxes collected pursuant to [this act],
 14 less the administrative fee authorized in [section 3(1)], to
 15 the state treasurer on a monthly basis. The state treasurer
 16 shall deposit one-half of the tax to the credit of the
 17 department of institutions to be used for the youth
 18 evaluation program and chemical abuse aftercare programs.
 19 The treasurer shall credit the remaining one-half of the tax
 20 to the department of justice to be used for grants to youth
 21 courts to fund chemical abuse assessments and the detention
 22 of juvenile offenders in facilities separate from adult
 23 jails.

24 Section 10. Codification instruction. Sections 1
 25 through 9 are intended to be codified as an integral part of

LC 1646/01

1 Title 15, and the provisions of Title 15 apply to sections 1
2 through 9.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB791, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a tax on the possession and storage of dangerous drugs; providing for the assessment and collection of the tax; and providing for disposition of the tax collected.

ASSUMPTIONS:

The fiscal impact on state government cannot be determined because the amount of possible revenue generated is unknown.

FISCAL IMPACT:

Expenditures:

Unknown.

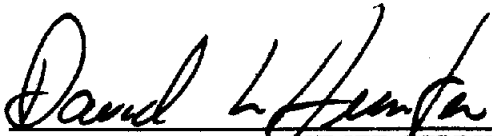
Revenues:

The proposed legislation would generate general fund revenue to offset the cost of youth evaluation and chemical abuse after care programs and the detention of youth in facilities separate from adults. However, the amount of possible revenues generated cannot be determined for the following reasons:

1. The ability to pay of persons in possession of such drugs is unknown.
2. The amount of revenues generated could vary depending upon the level and availability of investigative and enforcement resources.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Unknown.

 DATE 2/20/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE _____
BILL STRIZICH, PRIMARY SPONSOR

Fiscal Note for HB791, as introduced.

HB 791

APPROVED BY COMMITTEE
ON TAXATION

STATEMENT OF INTENT

HOUSE BILL 791

House Taxation Committee

A statement of intent is required for this bill because it allows the department of revenue to adopt rules for the administration and enforcement of this tax.

It is the intent of the legislature that the department of revenue adopt rules that:

(1) prescribe the forms of the tax returns and reports required by this act and the time for filing such returns and reports;

(2) require the taxpayer to keep such records and provide such information to the department of revenue necessary to assess the tax;

(3) define and clarify the terms and words used in this act;

(4) set the time, circumstances, and conditions for the compliance of law enforcement agencies with section 5 of this act;

(5) prescribe rules of procedure for administrative hearing under this act before the department; and

(6) prescribe rules for refunds of the tax.

SECOND READING
HB - 791

1 HOUSE BILL NO. 791

2 INTRODUCED BY STRIZICH, NISBET, WHALEN, RAMIREZ, ROTH,
 3 CODY, MANNING, BACHINI, SCHYE, MENAHAN, GAGE, MILLER,
 4 BRANDEWIE, SQUIRES, MILES, MANUEL, GIACOMETTO, D. BROWN,
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7
 8 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A TAX ON
 9 THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING FOR
 10 THE ASSESSMENT AND COLLECTION OF THE TAX; AND GRANTING
 11 RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; PROVIDING
 12 FOR FUNDING OF THE ADMINISTRATION OF THE TAX; STATUTORILY
 13 APPROPRIATING THE ADMINISTRATIVE FUNDING; PROVIDING FOR
 14 DISPOSITION OF THE TAX COLLECTED; AND AMENDING SECTION
 15 17-7-502, MCA."

16
 17 WHEREAS, DANGEROUS DRUGS ARE COMMODITIES HAVING
 18 CONSIDERABLE VALUE, AND THE EXISTENCE IN MONTANA OF A LARGE
 19 AND PROFITABLE DANGEROUS DRUG INDUSTRY AND EXPENSIVE TRADE
 20 IN DANGEROUS DRUGS IS IRREFUTABLE; AND

21 WHEREAS, THE STATE DOES NOT ENDORSE THE MANUFACTURING
 22 OF OR TRADING IN DANGEROUS DRUGS AND DOES NOT CONSIDER THE
 23 USE OF SUCH DRUGS TO BE ACCEPTABLE, BUT IT RECOGNIZES THE
 24 ECONOMIC IMPACT UPON THE STATE OF THE MANUFACTURING AND
 25 SELLING OF DANGEROUS DRUGS; AND

1 WHEREAS, IT IS APPROPRIATE THAT SOME OF THE REVENUE
 2 GENERATED BY THIS TAX BE DEVOTED TO CONTINUING INVESTIGATIVE
 3 EFFORTS DIRECTED TOWARD THE IDENTIFICATION, ARREST, AND
 4 PROSECUTION OF INDIVIDUALS INVOLVED IN CONDUCTING ILLEGAL
 5 CONTINUING CRIMINAL ENTERPRISES THAT AFFECT THE DISTRIBUTION
 6 OF DANGEROUS DRUGS IN MONTANA.

7 THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA DOES
 8 NOT WISH TO GIVE CREDENCE TO THE NOTION THAT THE
 9 MANUFACTURING, SELLING, AND USE OF DANGEROUS DRUGS IS LEGAL
 10 OR OTHERWISE PROPER, BUT FINDS IT APPROPRIATE IN VIEW OF THE
 11 ECONOMIC IMPACT OF SUCH DRUGS TO TAX THOSE WHO PROFIT FROM
 12 DRUG-RELATED OFFENSES AND TO DISPOSE OF THE TAX PROCEEDS
 13 THROUGH PROVIDING ADDITIONAL ANTICRIME INITIATIVES WITHOUT
 14 BURDENING LAW ABIDING TAXPAYERS.

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Short title. This act may be
 18 cited as the "Dangerous Drug Tax Act".

19 NEW SECTION. Section 2. Definitions. As used in [this
 20 act], unless the context requires otherwise, the following
 21 definitions apply:

22 (1) "Dangerous drug" has the meaning provided in
 23 50-32-101.

24 (2) "Department" means the department of revenue
 25 provided for in 2-15-1301.

1 (3) "Person" means an individual, firm, association,
2 corporation, partnership, or any other group or combination
3 acting as a unit.

4 NEW SECTION. Section 3. Tax on dangerous drugs. (1)

5 There is a tax on the possession and storage of dangerous
6 drugs. Except as provided in [section 4], each person
7 possessing or storing dangerous drugs is liable for the tax.
8 The tax imposed is determined pursuant to subsection (2).
9 The tax is due and payable on the date of assessment. The
10 department shall add an administration fee of ~~1%~~ 5% of the
11 tax imposed pursuant to subsection (2) to offset costs
12 incurred in assessing value, in collecting the tax, and in
13 any review and appeal process.

14 (2) The tax on possession and storage of dangerous
15 drugs is the greater of:

16 (a) 10% of the assessed market value of the drugs, as
17 determined by the department, or:

18 (b) (i) \$100 per ounce of marijuana, as defined in
19 50-32-101, or its derivatives, as determined by the
20 aggregate weight of the substance seized;

21 (ii) \$250 per ounce of hashish, as defined in
22 50-32-101, as determined by the aggregate weight of the
23 substance seized;

24 (iii) \$200 per gram of any substance containing or
25 purported to contain any amount of a dangerous drug included

1 in Schedule I pursuant to 50-32-222(1), (2), (4), and (5),
2 or Schedule II pursuant to 50-32-224(1) through (4), as
3 determined by the aggregate weight of the substance seized;

4 (iv) \$10 per 100 micrograms of any substance containing
5 or purported to contain any amount of lysergic acid
6 diethylamide (LSD) included in Schedule I pursuant to
7 50-32-222(3), as determined by the aggregate weight of the
8 substance seized;

9 (v) \$100 per ounce of any substance containing or
10 purported to contain any amount of an immediate precursor as
11 defined under Schedule II pursuant to 50-32-224(5), as
12 determined by the aggregate weight of the substance seized;
13 and

14 (vi) \$100 per gram of any substance containing or
15 purported to contain any amount of dangerous drug not
16 otherwise provided for in this subsection (2).

17 (3) The tax imposed pursuant to this section must be
18 collected only after any state or federal forfeitures have
19 been satisfied.

20 NEW SECTION. Section 4. Exemptions. The tax imposed
21 pursuant to [section 3] does not apply to any person
22 authorized by state or federal law to possess or store
23 dangerous drugs. The burden of proof of an exemption from
24 [section 3] is on the person claiming it.

25 NEW SECTION. Section 5. ~~Statement-of-tax.--A--written~~

1 ~~statement--of--the--assessment-and-tax-due-under--{section-3}~~
 2 ~~must--be--presented--to--the--taxpayer--by--the--department,~~
 3 ~~ADMINISTRATION AND ENFORCEMENT -- DEPARTMENT RULES. (1) ALL~~
 4 ~~LAW ENFORCEMENT PERSONNEL AND PEACE OFFICERS SHALL PROMPTLY~~
 5 ~~REPORT EACH PERSON SUBJECT TO THE TAX TO THE DEPARTMENT,~~
 6 ~~TOGETHER WITH SUCH OTHER INFORMATION WHICH THE DEPARTMENT~~
 7 ~~MAY REQUIRE, IN A MANNER AND ON A FORM PRESCRIBED BY THE~~
 8 ~~DEPARTMENT.~~

9 (2) ~~THE DEFICIENCY ASSESSMENT PROVISIONS OF 15-53-105,~~
 10 ~~THE CIVIL PENALTY AND INTEREST PROVISIONS OF 15-53-111, THE~~
 11 ~~CRIMINAL PENALTY PROVISIONS OF 15-30-321(3), THE ESTIMATION~~
 12 ~~OF TAX PROVISIONS OF 15-53-112, AND THE STATUTE OF~~
 13 ~~LIMITATIONS PROVISIONS OF 15-53-115 APPLY TO THIS TAX AND~~
 14 ~~ARE FULLY INCORPORATED BY REFERENCE IN THIS CHAPTER. THE~~
 15 ~~DEPARTMENT MAY ADOPT SUCH RULES AS ARE NECESSARY TO~~
 16 ~~ADMINISTER AND ENFORCE THE TAX.~~

17 NEW SECTION. Section 6. Tax appeal. A person
 18 aggrieved by an assessment pursuant to [section 3] or an
 19 exemption decision pursuant to [section 4] may appeal the
 20 assessment or exemption decision pursuant to Title 15,
 21 chapter 2, part 3.

22 NEW SECTION. Section 7. ~~Tax--lien;--The--tax--imposed~~
 23 ~~pursuant--to--{section--3},--together--with--interest--and~~
 24 ~~penalties,--is--a--lien--in--favor--of--the--state--as--provided--in~~
 25 ~~Title--15,--chapter--16,--part--4. The lien attaches at the time~~

1 ~~the tax is assessed and is enforceable in the same manner as~~
 2 ~~other tax liens; WARRANT FOR DISTRAINT. IF ALL OR PART OF~~
 3 ~~THE TAX IMPOSED BY THIS CHAPTER IS NOT PAID WHEN DUE, THE~~
 4 ~~DEPARTMENT MAY ISSUE A WARRANT FOR DISTRAINT AS PROVIDED IN~~
 5 ~~TITLE 15, CHAPTER 1, PART 7. THE RESULTING LIEN SHALL HAVE~~
 6 ~~PRECEDENCE OVER ANY OTHER CLAIM, LIEN, OR DEMAND THEREAFTER~~
 7 ~~FILED AND RECORDED.~~

8 NEW SECTION. Section 8. Accounts. (1) There is an
 9 institutions evaluation special revenue account within the
 10 state treasury. One-half of the taxes collected under
 11 [section 9] shall be deposited in the account.

12 (2) There is a chemical abuse assessment special
 13 revenue account within the state treasury. One-half of the
 14 taxes collected under [section 9] shall be deposited in the
 15 account.

16 NEW SECTION. Section 9. Disposition of proceeds. (1)
 17 The department shall transfer all taxes collected pursuant
 18 to [this act], less the administrative fee authorized in
 19 [section 3(1)], to the state treasurer on a monthly basis.

20 (2) The state treasurer shall deposit one-half of the
 21 tax to the credit of the department of institutions to be
 22 used for the youth evaluation program and chemical abuse
 23 aftercare programs.

24 (3) The treasurer shall credit the remaining one-half
 25 of the tax PROCEEDS AS FOLLOWS:

1 (A) 85% to the department of justice to be used for
 2 grants to youth courts to fund chemical abuse assessments
 3 and the detention of juvenile offenders in facilities
 4 separate from adult jails; AND

5 (B) 15% TO THE SPECIAL LAW ENFORCEMENT ASSISTANCE
 6 ACCOUNT CREATED IN 44-13-101 FOR THE ACTIVITIES DESCRIBED IN
 7 44-13-103.

8 NEW SECTION. SECTION 10. SPECIAL REVENUE ACCOUNT. (1)
 9 THERE IS CREATED A SPECIAL REVENUE FUND TO BE CALLED THE
 10 DANGEROUS DRUG TAX ADMINISTRATION FUND.

11 (2) ALL ADMINISTRATIVE FEES COLLECTED UNDER (SECTION
 12 3(1)) SHALL BE DEPOSITED BY THE DEPARTMENT INTO THE
 13 DANGEROUS DRUG TAX ADMINISTRATION FUND.

14 (3) THE MONEY IN THE DANGEROUS DRUG TAX ADMINISTRATION
 15 FUND MAY BE EXPENDED BY THE DEPARTMENT TO ADMINISTER THE TAX
 16 AND PAY ANY REFUND REQUIRED BY THIS CHAPTER.

17 (4) THE APPROPRIATION MADE IN SUBSECTION (3) IS A
 18 STATUTORY APPROPRIATION AS PROVIDED IN 17-7-502.

19 SECTION 11. SECTION 17-7-502, MCA, IS AMENDED TO READ:

20 "17-7-502. Statutory appropriations -- definition --
 21 requisites for validity. (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
 2 of the following provisions:

3 (a) The law containing the statutory authority must be
 4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
 6 appropriation must specifically state that a statutory
 7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
 9 statutory appropriations:

10 (a) 2-9-202;

11 (b) 2-17-105;

12 (c) 2-18-812;

13 (d) 10-3-203;

14 (e) 10-3-312;

15 (f) 10-3-314;

16 (g) 10-4-301;

17 (h) 13-37-304;

18 (i) 15-31-702;

19 (j) 15-36-112;

20 (k) 15-70-101;

21 (l) 16-1-404;

22 (m) 16-1-410;

23 (n) 16-1-411;

24 (o) 17-3-212;

25 (p) 17-5-404;

- 1 (q) 17-5-424;
- 2 (r) 17-5-804;
- 3 (s) 19-8-504;
- 4 (t) 19-9-702;
- 5 (u) 19-9-1007;
- 6 (v) 19-10-205;
- 7 (w) 19-10-305;
- 8 (x) 19-10-506;
- 9 (y) 19-11-512;
- 10 (z) 19-11-513;
- 11 (aa) 19-11-606;
- 12 (bb) 19-12-301;
- 13 (cc) 19-13-604;
- 14 (dd) 20-6-406;
- 15 (ee) 20-8-111;
- 16 (ff) 23-5-612;
- 17 (gg) 37-51-501;
- 18 (hh) 53-24-206;
- 19 (ii) 75-1-1101;
- 20 (jj) 75-7-305;
- 21 (kk) 80-2-103;
- 22 (ll) 80-2-228;
- 23 (mm) 90-3-301;
- 24 (nn) 90-3-302;
- 25 (oo) 90-15-103; and

1 (pp) Sec. 13, HB 861, L. 1985; and
 2 (qq) [section 10].
 3 (4) There is a statutory appropriation to pay the
 4 principal, interest, premiums, and costs of issuing, paying,
 5 and securing all bonds, notes, or other obligations, as due,
 6 that have been authorized and issued pursuant to the laws of
 7 Montana. Agencies that have entered into agreements
 8 authorized by the laws of Montana to pay the state
 9 treasurer, for deposit in accordance with 17-2-101 through
 10 17-2-107, as determined by the state treasurer, an amount
 11 sufficient to pay the principal and interest as due on the
 12 bonds or notes have statutory appropriation authority for
 13 such payments."
 14 NEW SECTION. Section 12. Codification instruction.
 15 Sections 1 through 9 10 are intended to be codified as an
 16 integral part of Title 15, and the provisions of Title 15
 17 apply to sections 1 through 9 10.
 -End-

1 STATEMENT OF INTENT

2 HOUSE BILL 791

3 House Taxation Committee

4

5 A statement of intent is required for this bill because
6 it allows the department of revenue to adopt rules for the
7 administration and enforcement of this tax.

8 It is the intent of the legislature that the department
9 of revenue adopt rules that:

10 (1) prescribe the forms of the tax returns and reports
11 required by this act and the time for filing such returns
12 and reports;

13 (2) require the taxpayer to keep such records and
14 provide such information to the department of revenue
15 necessary to assess the tax;

16 (3) define and clarify the terms and words used in
17 this act;

18 (4) set the time, circumstances, and conditions for
19 the compliance of law enforcement agencies with section 5 of
20 this act;

21 (5) prescribe rules of procedure for administrative
22 hearing under this act before the department; and

23 (6) prescribe rules for refunds of the tax.



THIRD READING
HB - 791

1 HOUSE BILL NO. 791

2 INTRODUCED BY STRIZICH, NISBET, WHALEN, RAMIREZ, ROTH,
 3 CODY, MANNING, BACHINI, SCHYE, MENAHAN, GAGE, MILLER,
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7
 8 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A TAX ON
 9 THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING FOR
 10 THE ASSESSMENT AND COLLECTION OF THE TAX; AND GRANTING
 11 RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; PROVIDING
 12 FOR FUNDING OF THE ADMINISTRATION OF THE TAX; STATUTORILY
 13 APPROPRIATING THE ADMINISTRATIVE FUNDING; PROVIDING FOR
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 17 WHEREAS, DANGEROUS DRUGS ARE COMMODITIES HAVING
 18 CONSIDERABLE VALUE, AND THE EXISTENCE IN MONTANA OF A LARGE
 19 AND PROFITABLE DANGEROUS DRUG INDUSTRY AND EXPENSIVE TRADE
 20 IN DANGEROUS DRUGS IS IRREFUTABLE; AND

21 WHEREAS, THE STATE DOES NOT ENDORSE THE MANUFACTURING
 22 OF OR TRADING IN DANGEROUS DRUGS AND DOES NOT CONSIDER THE
 23 USE OF SUCH DRUGS TO BE ACCEPTABLE, BUT IT RECOGNIZES THE
 24 ECONOMIC IMPACT UPON THE STATE OF THE MANUFACTURING AND
 25 SELLING OF DANGEROUS DRUGS; AND

1 WHEREAS, IT IS APPROPRIATE THAT SOME OF THE REVENUE
 2 GENERATED BY THIS TAX BE DEVOTED TO CONTINUING INVESTIGATIVE
 3 EFFORTS DIRECTED TOWARD THE IDENTIFICATION, ARREST, AND
 4 PROSECUTION OF INDIVIDUALS INVOLVED IN CONDUCTING ILLEGAL
 5 CONTINUING CRIMINAL ENTERPRISES THAT AFFECT THE DISTRIBUTION
 6 OF DANGEROUS DRUGS IN MONTANA.

7 THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA DOES
 8 NOT WISH TO GIVE CREDENCE TO THE NOTION THAT THE
 9 MANUFACTURING, SELLING, AND USE OF DANGEROUS DRUGS IS LEGAL
 10 OR OTHERWISE PROPER, BUT FINDS IT APPROPRIATE IN VIEW OF THE
 11 ECONOMIC IMPACT OF SUCH DRUGS TO TAX THOSE WHO PROFIT FROM
 12 DRUG-RELATED OFFENSES AND TO DISPOSE OF THE TAX PROCEEDS
 13 THROUGH PROVIDING ADDITIONAL ANTICRIME INITIATIVES WITHOUT
 14 BURDENING LAW ABIDING TAXPAYERS.

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 18 cited as the "Dangerous Drug Tax Act".

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 20 act], unless the context requires otherwise, the following
 21 definitions apply:

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 23 50-32-101.

24 (2) "Department" means the department of revenue
 25 provided for in 2-15-1301.

1 (3) "Person" means an individual, firm, association,
2 corporation, partnership, or any other group or combination
3 acting as a unit.

4 NEW SECTION. Section 3. Tax on dangerous drugs.. (1)

5 There is a tax on the possession and storage of dangerous
6 drugs. Except as provided in [section 4], each person
7 possessing or storing dangerous drugs is liable for the tax.

8 The tax imposed is determined pursuant to subsection (2).

9 The tax is due and payable on the date of assessment. The
10 department shall add an administration fee of ~~1%~~ 5% of the
11 tax imposed pursuant to subsection (2) to offset costs
12 incurred in assessing value, in collecting the tax, and in
13 any review and appeal process.

14 (2) The tax on possession and storage of dangerous
15 drugs is the greater of:

16 (a) 10% of the assessed market value of the drugs, as
17 determined by the department, or:

18 (b) (i) \$100 per ounce of marijuana, as defined in
19 50-32-101, or its derivatives, as determined by the
20 aggregate weight of the substance seized;

21 (ii) \$250 per ounce of hashish, as defined in
22 50-32-101, as determined by the aggregate weight of the
23 substance seized;

24 (iii) \$200 per gram of any substance containing or
25 purported to contain any amount of a dangerous drug included

1 in Schedule I pursuant to 50-32-222(1), (2), (4), and (5),
2 or Schedule II pursuant to 50-32-224(1) through (4), as
3 determined by the aggregate weight of the substance seized;

4 (iv) \$10 per 100 micrograms of any substance containing
5 or purported to contain any amount of lysergic acid
6 diethylamide (LSD) included in Schedule I pursuant to
7 50-32-222(3), as determined by the aggregate weight of the
8 substance seized;

9 (v) \$100 per ounce of any substance containing or
10 purported to contain any amount of an immediate precursor as
11 defined under Schedule II pursuant to 50-32-224(5), as
12 determined by the aggregate weight of the substance seized;
13 and

14 (vi) \$100 per gram of any substance containing or
15 purported to contain any amount of dangerous drug not
16 otherwise provided for in this subsection (2).

17 (3) The tax imposed pursuant to this section must be
18 collected only after any state or federal forfeitures have
19 been satisfied.

20 NEW SECTION. Section 4. Exemptions. The tax imposed
21 pursuant to [section 3] does not apply to any person
22 authorized by state or federal law to possess or store
23 dangerous drugs. The burden of proof of an exemption from
24 [section 3] is on the person claiming it.

25 NEW SECTION. Section 5. Statement-of-tax--A--written

1 ~~statement--of--the--assessment-and-tax-due-under--{section-3}~~
 2 ~~must--be--presented--to--the--taxpayer--by--the--department~~
 3 ADMINISTRATION AND ENFORCEMENT -- DEPARTMENT RULES. (1) ALL
 4 LAW ENFORCEMENT PERSONNEL AND PEACE OFFICERS SHALL PROMPTLY
 5 REPORT EACH PERSON SUBJECT TO THE TAX TO THE DEPARTMENT,
 6 TOGETHER WITH SUCH OTHER INFORMATION WHICH THE DEPARTMENT
 7 MAY REQUIRE, IN A MANNER AND ON A FORM PRESCRIBED BY THE
 8 DEPARTMENT.

9 (2) THE DEFICIENCY ASSESSMENT PROVISIONS OF 15-53-105,
 10 THE CIVIL PENALTY AND INTEREST PROVISIONS OF 15-53-111, THE
 11 CRIMINAL PENALTY PROVISIONS OF 15-30-321(3), THE ESTIMATION
 12 OF TAX PROVISIONS OF 15-53-112, AND THE STATUTE OF
 13 LIMITATIONS PROVISIONS OF 15-53-115 APPLY TO THIS TAX AND
 14 ARE FULLY INCORPORATED BY REFERENCE IN THIS CHAPTER. THE
 15 DEPARTMENT MAY ADOPT SUCH RULES AS ARE NECESSARY TO
 16 ADMINISTER AND ENFORCE THE TAX.

17 NEW SECTION. Section 6. Tax appeal. A person
 18 aggrieved by an assessment pursuant to [section 3] or an
 19 exemption decision pursuant to [section 4] may appeal the
 20 assessment or exemption decision pursuant to Title 15,
 21 chapter 2, part 3.

22 NEW SECTION. Section 7. Tax--lien---The--tax--imposed
 23 pursuant--to--{section--3}--together--with--interest--and
 24 penalties,--is--a--lien--in--favor--of--the--state--as--provided--in
 25 Title--15,--chapter--16,--part--4. The--lien--attaches--at--the--time

1 ~~the--tax--is--assessed--and--is--enforceable--in--the--same--manner--as~~
 2 ~~other--tax--liens; WARRANT FOR DISTRAINT. IF ALL OR PART OF~~
 3 ~~THE TAX IMPOSED BY THIS CHAPTER IS NOT PAID WHEN DUE, THE~~
 4 ~~DEPARTMENT MAY ISSUE A WARRANT FOR DISTRAINT AS PROVIDED IN~~
 5 ~~TITLE 15, CHAPTER 1, PART 7. THE RESULTING LIEN SHALL HAVE~~
 6 ~~PRECEDENCE OVER ANY OTHER CLAIM, LIEN, OR DEMAND THEREAFTER~~
 7 ~~FILED AND RECORDED.~~

8 NEW SECTION. Section 8. Accounts. (1) There is an
 9 institutions evaluation special revenue account within the
 10 state treasury. One-half of the taxes collected under
 11 [section 9] shall be deposited in the account.

12 (2) There is a chemical abuse assessment special
 13 revenue account within the state treasury. One-half of the
 14 taxes collected under [section 9] shall be deposited in the
 15 account.

16 NEW SECTION. Section 9. Disposition of proceeds. (1)
 17 The department shall transfer all taxes collected pursuant
 18 to [this act], less the administrative fee authorized in
 19 [section 3(1)], to the state treasurer on a monthly basis.

20 (2) The state treasurer shall deposit one-half of the
 21 tax to the credit of the department of institutions to be
 22 used for the youth evaluation program and chemical abuse
 23 aftercare programs.

24 (3) The treasurer shall credit the remaining one-half
 25 of the tax PROCEEDS AS FOLLOWS:

1 (A) 85% to the department of justice to be used for
2 grants to youth courts to fund chemical abuse assessments
3 and the detention of juvenile offenders in facilities
4 separate from adult jails; AND

5 (B) 15% TO THE SPECIAL LAW ENFORCEMENT ASSISTANCE
6 ACCOUNT CREATED IN 44-13-101 FOR THE ACTIVITIES DESCRIBED IN
7 44-13-103.

8 NEW SECTION. SECTION 10. SPECIAL REVENUE ACCOUNT. (1)
9 THERE IS CREATED A SPECIAL REVENUE FUND TO BE CALLED THE
10 DANGEROUS DRUG TAX ADMINISTRATION FUND.

11 (2) ALL ADMINISTRATIVE FEES COLLECTED UNDER [SECTION
12 3(1)] SHALL BE DEPOSITED BY THE DEPARTMENT INTO THE
13 DANGEROUS DRUG TAX ADMINISTRATION FUND.

14 (3) THE MONEY IN THE DANGEROUS DRUG TAX ADMINISTRATION
15 FUND MAY BE EXPENDED BY THE DEPARTMENT TO ADMINISTER THE TAX
16 AND PAY ANY REFUND REQUIRED BY THIS CHAPTER.

17 (4) THE APPROPRIATION MADE IN SUBSECTION (3) IS A
18 STATUTORY APPROPRIATION AS PROVIDED IN 17-7-502.

19 SECTION 11. SECTION 17-7-502, MCA, IS AMENDED TO READ:

20 *17-7-502. Statutory appropriations -- definition --
21 requisites for validity. (1) A statutory appropriation is an
22 appropriation made by permanent law that authorizes spending
23 by a state agency without the need for a biennial
24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations:

- 10 (a) 2-9-202;
- 11 (b) 2-17-105;
- 12 (c) 2-18-812;
- 13 (d) 10-3-203;
- 14 (e) 10-3-312;
- 15 (f) 10-3-314;
- 16 (g) 10-4-301;
- 17 (h) 13-37-304;
- 18 (i) 15-31-702;
- 19 (j) 15-36-112;
- 20 (k) 15-70-101;
- 21 (l) 16-1-404;
- 22 (m) 16-1-410;
- 23 (n) 16-1-411;
- 24 (o) 17-3-212;
- 25 (p) 17-5-404;

1 (q) 17-5-424;
 2 (r) 17-5-804;
 3 (s) 19-8-504;
 4 (t) 19-9-702;
 5 (u) 19-9-1007;
 6 (v) 19-10-205;
 7 (w) 19-10-305;
 8 (x) 19-10-506;
 9 (y) 19-11-512;
 10 (z) 19-11-513;
 11 (aa) 19-11-606;
 12 (bb) 19-12-301;
 13 (cc) 19-13-604;
 14 (dd) 20-6-406;
 15 (ee) 20-8-111;
 16 (ff) 23-5-612;
 17 (gg) 37-51-501;
 18 (hh) 53-24-206;
 19 (ii) 75-1-1101;
 20 (jj) 75-7-305;
 21 (kk) 80-2-103;
 22 (ll) 80-2-228;
 23 (mm) 90-3-301;
 24 (nn) 90-3-302;
 25 (oo) 90-15-103; and

1 (pp) Sec. 13, HB 861, L. 1985; and
 2 (qq) [section 10].
 3 (4) There is a statutory appropriation to pay the
 4 principal, interest, premiums, and costs of issuing, paying,
 5 and securing all bonds, notes, or other obligations, as due,
 6 that have been authorized and issued pursuant to the laws of
 7 Montana. Agencies that have entered into agreements
 8 authorized by the laws of Montana to pay the state
 9 treasurer, for deposit in accordance with 17-2-101 through
 10 17-2-107, as determined by the state treasurer, an amount
 11 sufficient to pay the principal and interest as due on the
 12 bonds or notes have statutory appropriation authority for
 13 such payments."
 14 NEW SECTION. Section 12. Codification instruction.
 15 Sections 1 through 9 10 are intended to be codified as an
 16 integral part of Title 15, and the provisions of Title 15
 17 apply to sections 1 through 9 10.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 791

3 House Taxation Committee

4
5 A statement of intent is required for this bill because
6 it allows the department of revenue to adopt rules for the
7 administration and enforcement of this tax.

8 It is the intent of the legislature that the department
9 of revenue adopt rules that:

10 (1) prescribe the forms of the tax returns and reports
11 required by this act and the time for filing such returns
12 and reports;

13 (2) require the taxpayer to keep such records and
14 provide such information to the department of revenue
15 necessary to assess the tax;

16 (3) define and clarify the terms and words used in
17 this act;

18 (4) set the time, circumstances, and conditions for
19 the compliance of law enforcement agencies with section 5 of
20 this act;

21 (5) prescribe rules of procedure for administrative
22 hearing under this act before the department; and

23 (6) prescribe rules for refunds of the tax.

REFERENCE BILL

HB - 791



1 HOUSE BILL NO. 791

2 INTRODUCED BY STRIZICH, NISBET, WHALEN, RAMIREZ, ROTH,
 3 CODY, MANNING, BACHINI, SCHYE, MENAHAN, GAGE, MILLER,
 4 BRANDEWIE, SQUIRES, MILES, MANUEL, GIACOMETTO, D. BROWN,
 5 DARKO, DRISCOLL, DEMARS, WALKER, COMPTON, RANEY, THOMAS,
 6 POULSEN, MCCORMICK, PISTORIA, PHILLIPS

7
 8 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A TAX ON
 9 THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING FOR
 10 THE ASSESSMENT AND COLLECTION OF THE TAX; AND GRANTING
 11 RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; PROVIDING
 12 FOR FUNDING OF THE ADMINISTRATION OF THE TAX; STATUTORILY
 13 APPROPRIATING THE ADMINISTRATIVE FUNDING; PROVIDING FOR
 14 DISPOSITION OF THE TAX COLLECTED; AND AMENDING SECTION
 15 17-7-502, MCA."

16
 17 WHEREAS, DANGEROUS DRUGS ARE COMMODITIES HAVING
 18 CONSIDERABLE VALUE, AND THE EXISTENCE IN MONTANA OF A LARGE
 19 AND PROFITABLE DANGEROUS DRUG INDUSTRY AND EXPENSIVE TRADE
 20 IN DANGEROUS DRUGS IS IRREFUTABLE; AND

21 WHEREAS, THE STATE DOES NOT ENDORSE THE MANUFACTURING
 22 OF OR TRADING IN DANGEROUS DRUGS AND DOES NOT CONSIDER THE
 23 USE OF SUCH DRUGS TO BE ACCEPTABLE, BUT IT RECOGNIZES THE
 24 ECONOMIC IMPACT UPON THE STATE OF THE MANUFACTURING AND
 25 SELLING OF DANGEROUS DRUGS; AND

1 WHEREAS, IT IS APPROPRIATE THAT SOME OF THE REVENUE
 2 GENERATED BY THIS TAX BE DEVOTED TO CONTINUING INVESTIGATIVE
 3 EFFORTS DIRECTED TOWARD THE IDENTIFICATION, ARREST, AND
 4 PROSECUTION OF INDIVIDUALS INVOLVED IN CONDUCTING ILLEGAL
 5 CONTINUING CRIMINAL ENTERPRISES THAT AFFECT THE DISTRIBUTION
 6 OF DANGEROUS DRUGS IN MONTANA.

7 THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA DOES
 8 NOT WISH TO GIVE CREDENCE TO THE NOTION THAT THE
 9 MANUFACTURING, SELLING, AND USE OF DANGEROUS DRUGS IS LEGAL
 10 OR OTHERWISE PROPER, BUT FINDS IT APPROPRIATE IN VIEW OF THE
 11 ECONOMIC IMPACT OF SUCH DRUGS TO TAX THOSE WHO PROFIT FROM
 12 DRUG-RELATED OFFENSES AND TO DISPOSE OF THE TAX PROCEEDS
 13 THROUGH PROVIDING ADDITIONAL ANTICRIME INITIATIVES WITHOUT
 14 BURDENING LAW ABIDING TAXPAYERS.

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Short title. This act may be
 18 cited as the "Dangerous Drug Tax Act".

19 NEW SECTION. Section 2. Definitions. As used in [this
 20 act], unless the context requires otherwise, the following
 21 definitions apply:

22 (1) "Dangerous drug" has the meaning provided in
 23 50-32-101.

24 (2) "Department" means the department of revenue
 25 provided for in 2-15-1301.

1 (3) "Person" means an individual, firm, association,
2 corporation, partnership, or any other group or combination
3 acting as a unit.

4 NEW SECTION. Section 3. Tax on dangerous drugs. (1)
5 There is a tax on the possession and storage of dangerous
6 drugs. Except as provided in [section 4], each person
7 possessing or storing dangerous drugs is liable for the tax.
8 The tax imposed is determined pursuant to subsection (2).
9 The tax is due and payable on the date of assessment. The
10 department shall add an administration fee of ~~3%~~ 5% of the
11 tax imposed pursuant to subsection (2) to offset costs
12 incurred in assessing value, in collecting the tax, and in
13 any review and appeal process.

14 (2) The tax on possession and storage of dangerous
15 drugs is the greater of:

16 (a) 10% of the assessed market value of the drugs, as
17 determined by the department, or:

18 (b) (i) \$100 per ounce of marijuana, as defined in
19 50-32-101, or its derivatives, as determined by the
20 aggregate weight of the substance seized;

21 (ii) \$250 per ounce of hashish, as defined in
22 50-32-101, as determined by the aggregate weight of the
23 substance seized;

24 (iii) \$200 per gram of any substance containing or
25 purported to contain any amount of a dangerous drug included

1 in Schedule I pursuant to 50-32-222(1), (2), (4), and (5),
2 or Schedule II pursuant to 50-32-224(1) through (4), as
3 determined by the aggregate weight of the substance seized;

4 (iv) \$10 per 100 micrograms of any substance containing
5 or purported to contain any amount of lysergic acid
6 diethylamide (LSD) included in Schedule I pursuant to
7 50-32-222(3), as determined by the aggregate weight of the
8 substance seized;

9 (v) \$100 per ounce of any substance containing or
10 purported to contain any amount of an immediate precursor as
11 defined under Schedule II pursuant to 50-32-224(5), as
12 determined by the aggregate weight of the substance seized;
13 and

14 (vi) \$100 per gram of any substance containing or
15 purported to contain any amount of dangerous drug not
16 otherwise provided for in this subsection (2).

17 (3) The tax imposed pursuant to this section must be
18 collected only after any state or federal forfeitures have
19 been satisfied.

20 NEW SECTION. Section 4. Exemptions. The tax imposed
21 pursuant to [section 3] does not apply to any person
22 authorized by state or federal law to possess or store
23 dangerous drugs. The burden of proof of an exemption from
24 [section 3] is on the person claiming it.

25 NEW SECTION. Section 5. ~~Statement-of-tax--A--written~~

1 ~~statement--of--the--assessment-and-tax-due-under--{section-3}~~
 2 ~~must--be--presented--to--the--taxpayer--by--the--department-~~
 3 ADMINISTRATION AND ENFORCEMENT -- DEPARTMENT RULES. (1) ALL
 4 LAW ENFORCEMENT PERSONNEL AND PEACE OFFICERS SHALL PROMPTLY
 5 REPORT EACH PERSON SUBJECT TO THE TAX TO THE DEPARTMENT,
 6 TOGETHER WITH SUCH OTHER INFORMATION WHICH THE DEPARTMENT
 7 MAY REQUIRE, IN A MANNER AND ON A FORM PRESCRIBED BY THE
 8 DEPARTMENT.

9 (2) THE DEFICIENCY ASSESSMENT PROVISIONS OF 15-53-105,
 10 THE CIVIL PENALTY AND INTEREST PROVISIONS OF 15-53-111, THE
 11 CRIMINAL PENALTY PROVISIONS OF 15-30-321(3), THE ESTIMATION
 12 OF TAX PROVISIONS OF 15-53-112, AND THE STATUTE OF
 13 LIMITATIONS PROVISIONS OF 15-53-115 APPLY TO THIS TAX AND
 14 ARE FULLY INCORPORATED BY REFERENCE IN THIS CHAPTER. THE
 15 DEPARTMENT MAY ADOPT SUCH RULES AS ARE NECESSARY TO
 16 ADMINISTER AND ENFORCE THE TAX.

17 NEW SECTION. Section 6. Tax appeal. A person
 18 aggrieved by an assessment pursuant to [section 3] or an
 19 exemption decision pursuant to [section 4] may appeal the
 20 assessment or exemption decision pursuant to Title 15,
 21 chapter 2, part 3.

22 NEW SECTION. Section 7. ~~tax--lien;--The--tax--imposed~~
 23 ~~pursuant--to--{section--3},--together--with--interest--and~~
 24 ~~penalties;--is--a--lien--in--favor--of--the--state--as--provided--in~~
 25 ~~Title--15--chapter--16--part--4--The--lien--attaches--at--the--time~~

1 ~~the-tax-is-assessed-and-is-enforceable-in-the-same-manner-as~~
 2 ~~other--tax--liens.~~ WARRANT FOR DISTRAINT. IF ALL OR PART OF
 3 THE TAX IMPOSED BY THIS CHAPTER IS NOT PAID WHEN DUE, THE
 4 DEPARTMENT MAY ISSUE A WARRANT FOR DISTRAINT AS PROVIDED IN
 5 TITLE 15, CHAPTER 1, PART 7. THE RESULTING LIEN SHALL HAVE
 6 PRECEDENCE OVER ANY OTHER CLAIM, LIEN, OR DEMAND THEREAFTER
 7 FILED AND RECORDED.

8 NEW SECTION. Section 8. Accounts. (1) There is an
 9 institutions evaluation special revenue account within the
 10 state treasury. One-half of the taxes collected under
 11 [section 9] shall be deposited in the account.

12 (2) There is a chemical abuse assessment special
 13 revenue account within the state treasury. One-half of the
 14 taxes collected under [section 9] shall be deposited in the
 15 account.

16 NEW SECTION. Section 9. Disposition of proceeds. (1)
 17 The department shall transfer all taxes collected pursuant
 18 to [this act], less the administrative fee authorized in
 19 [section 3(1)], to the state treasurer on a monthly basis.

20 (2) The state treasurer shall deposit one-half of the
 21 tax to the credit of the department of institutions to be
 22 used for the youth evaluation program and chemical abuse
 23 aftercare programs.

24 (3) The treasurer shall credit the remaining one-half
 25 of the tax PROCEEDS AS FOLLOWS:

1 (A) 85% to the department of justice to be used for
2 grants to youth courts to fund chemical abuse assessments
3 and the detention of juvenile offenders in facilities
4 separate from adult jails; AND

5 (B) 15% TO THE SPECIAL LAW ENFORCEMENT ASSISTANCE
6 ACCOUNT CREATED IN 44-13-101 FOR THE ACTIVITIES DESCRIBED IN
7 44-13-103.

8 NEW SECTION. SECTION 10. SPECIAL REVENUE ACCOUNT. (1)
9 THERE IS CREATED A SPECIAL REVENUE FUND TO BE CALLED THE
10 DANGEROUS DRUG TAX ADMINISTRATION FUND.

11 (2) ALL ADMINISTRATIVE FEES COLLECTED UNDER (SECTION
12 3(1)) SHALL BE DEPOSITED BY THE DEPARTMENT INTO THE
13 DANGEROUS DRUG TAX ADMINISTRATION FUND.

14 (3) THE MONEY IN THE DANGEROUS DRUG TAX ADMINISTRATION
15 FUND MAY BE EXPENDED BY THE DEPARTMENT TO ADMINISTER THE TAX
16 AND PAY ANY REFUND REQUIRED BY THIS CHAPTER.

17 (4) THE APPROPRIATION MADE IN SUBSECTION (3) IS A
18 STATUTORY APPROPRIATION AS PROVIDED IN 17-7-502.

19 SECTION 11. SECTION 17-7-502, MCA, IS AMENDED TO READ:

20 *17-7-502. Statutory appropriations -- definition --
21 requisites for validity. (1) A statutory appropriation is an
22 appropriation made by permanent law that authorizes spending
23 by a state agency without the need for a biennial
24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations:

10 (a) 2-9-202;

11 (b) 2-17-105;

12 (c) 2-18-812;

13 (d) 10-3-203;

14 (e) 10-3-312;

15 (f) 10-3-314;

16 (g) 10-4-301;

17 (h) 13-37-304;

18 (i) 15-31-702;

19 (j) 15-36-112;

20 (k) 15-70-101;

21 (l) 16-1-404;

22 (m) 16-1-410;

23 (n) 16-1-411;

24 (o) 17-3-212;

25 (p) 17-5-404;

1 (q) 17-5-424;
 2 (r) 17-5-804;
 3 (s) 19-8-504;
 4 (t) 19-9-702;
 5 (u) 19-9-1007;
 6 (v) 19-10-205;
 7 (w) 19-10-305;
 8 (x) 19-10-506;
 9 (y) 19-11-512;
 10 (z) 19-11-513;
 11 (aa) 19-11-606;
 12 (bb) 19-12-301;
 13 (cc) 19-13-604;
 14 (dd) 20-6-406;
 15 (ee) 20-8-111;
 16 (ff) 23-5-612;
 17 (gg) 37-51-501;
 18 (hh) 53-24-206;
 19 (ii) 75-1-1101;
 20 (jj) 75-7-305;
 21 (kk) 80-2-103;
 22 (ll) 80-2-228;
 23 (mm) 90-3-301;
 24 (nn) 90-3-302;
 25 (oo) 90-15-103; and

1 (pp) Sec. 13, HB 861, L. 1985; and
 2 (qq) [section 10].
 3 (4) There is a statutory appropriation to pay the
 4 principal, interest, premiums, and costs of issuing, paying,
 5 and securing all bonds, notes, or other obligations, as due,
 6 that have been authorized and issued pursuant to the laws of
 7 Montana. Agencies that have entered into agreements
 8 authorized by the laws of Montana to pay the state
 9 treasurer, for deposit in accordance with 17-2-101 through
 10 17-2-107, as determined by the state treasurer, an amount
 11 sufficient to pay the principal and interest as due on the
 12 bonds or notes have statutory appropriation authority for
 13 such payments."
 14 NEW SECTION. Section 12. Codification instruction.
 15 Sections 1 through 9 10 are intended to be codified as an
 16 integral part of Title 15, and the provisions of Title 15
 17 apply to sections 1 through 9 10.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 791

3 House Taxation Committee

4

5 A statement of intent is required for this bill because
6 it allows the department of revenue to adopt rules for the
7 administration and enforcement of this tax.

8 It is the intent of the legislature that the department
9 of revenue adopt rules that:

10 (1) prescribe the forms of the tax returns and reports
11 required by this act and the time for filing such returns
12 and reports;

13 (2) require the taxpayer to keep such records and
14 provide such information to the department of revenue
15 necessary to assess the tax;

16 (3) define and clarify the terms and words used in
17 this act;

18 (4) set the time, circumstances, and conditions for
19 the compliance of law enforcement agencies with section 5 of
20 this act;

21 (5) prescribe rules of procedure for administrative
22 hearing under this act before the department; and

23 (6) prescribe rules for refunds of the tax.

REFERENCE BILL
SECOND PRINTING
AS AMENDED

HB 791



HOUSE BILL NO. 791

INTRODUCED BY STRIZICH, NISBET, WHALEN, RAMIREZ, ROTH, CODY, MANNING, BACHINI, SCHYE, MENAHAN, GAGE, MILLER, BRANDEWIE, SQUIRES, MILES, MANUEL, GIACOMETTO, D. BROWN, DARKO, DRISCOLL, DEMARS, WALKER, COMPTON, RANEY, THOMAS, POULSEN, MCCORMICK, PISTORIA, PHILLIPS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A TAX ON THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING FOR THE ASSESSMENT AND COLLECTION OF THE TAX; AND GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; PROVIDING FOR FUNDING OF THE ADMINISTRATION OF THE TAX; STATUTORILY APPROPRIATING THE ADMINISTRATIVE FUNDING; PROVIDING FOR DISPOSITION OF THE TAX COLLECTED; AND AMENDING SECTION 17-7-502, MCA."

WHEREAS, DANGEROUS DRUGS ARE COMMODITIES HAVING CONSIDERABLE VALUE, AND THE EXISTENCE IN MONTANA OF A LARGE AND PROFITABLE DANGEROUS DRUG INDUSTRY AND EXPENSIVE TRADE IN DANGEROUS DRUGS IS IRREFUTABLE; AND

WHEREAS, THE STATE DOES NOT ENDORSE THE MANUFACTURING OF OR TRADING IN DANGEROUS DRUGS AND DOES NOT CONSIDER THE USE OF SUCH DRUGS TO BE ACCEPTABLE, BUT IT RECOGNIZES THE ECONOMIC IMPACT UPON THE STATE OF THE MANUFACTURING AND SELLING OF DANGEROUS DRUGS; AND

WHEREAS, IT IS APPROPRIATE THAT SOME OF THE REVENUE GENERATED BY THIS TAX BE DEVOTED TO CONTINUING INVESTIGATIVE EFFORTS DIRECTED TOWARD THE IDENTIFICATION, ARREST, AND PROSECUTION OF INDIVIDUALS INVOLVED IN CONDUCTING ILLEGAL CONTINUING CRIMINAL ENTERPRISES THAT AFFECT THE DISTRIBUTION OF DANGEROUS DRUGS IN MONTANA.

THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA DOES NOT WISH TO GIVE CREDENCE TO THE NOTION THAT THE MANUFACTURING, SELLING, AND USE OF DANGEROUS DRUGS IS LEGAL OR OTHERWISE PROPER, BUT FINDS IT APPROPRIATE IN VIEW OF THE ECONOMIC IMPACT OF SUCH DRUGS TO TAX THOSE WHO PROFIT FROM DRUG-RELATED OFFENSES AND TO DISPOSE OF THE TAX PROCEEDS THROUGH PROVIDING ADDITIONAL ANTICRIME INITIATIVES WITHOUT BURDENING LAW ABIDING TAXPAYERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. This act may be cited as the "Dangerous Drug Tax Act".

NEW SECTION. Section 2. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

- (1) "Dangerous drug" has the meaning provided in 50-32-101.
(2) "Department" means the department of revenue provided for in 2-15-1301.

1 (3) "Person" means an individual, firm, association,
2 corporation, partnership, or any other group or combination
3 acting as a unit.

4 NEW SECTION. Section 3. Tax on dangerous drugs. (1)
5 There is a tax on the possession and storage of dangerous
6 drugs. Except as provided in [section 4], each person
7 possessing or storing dangerous drugs is liable for the tax.
8 The tax imposed is determined pursuant to subsection (2).
9 The tax is due and payable on the date of assessment. The
10 department shall add an administration fee of ~~1%~~ 5% of the
11 tax imposed pursuant to subsection (2) to offset costs
12 incurred in assessing value, in collecting the tax, and in
13 any review and appeal process.

14 (2) The tax on possession and storage of dangerous
15 drugs is the greater of:

16 (a) 10% of the assessed market value of the drugs, as
17 determined by the department, or:

18 (b) (i) \$100 per ounce of marijuana, as defined in
19 50-32-101, or its derivatives, as determined by the
20 aggregate weight of the substance seized;

21 (ii) \$250 per ounce of hashish, as defined in
22 50-32-101, as determined by the aggregate weight of the
23 substance seized;

24 (iii) \$200 per gram of any substance containing or
25 purported to contain any amount of a dangerous drug included

1 in Schedule I pursuant to 50-32-222(1), (2), (4), and (5),
2 or Schedule II pursuant to 50-32-224(1) through (4), as
3 determined by the aggregate weight of the substance seized;

4 (iv) \$10 per 100 micrograms of any substance containing
5 or purported to contain any amount of lysergic acid
6 diethylamide (LSD) included in Schedule I pursuant to
7 50-32-222(3), as determined by the aggregate weight of the
8 substance seized;

9 (v) \$100 per ounce of any substance containing or
10 purported to contain any amount of an immediate precursor as
11 defined under Schedule II pursuant to 50-32-224(5), as
12 determined by the aggregate weight of the substance seized;
13 and

14 (vi) \$100 per gram of any substance containing or
15 purported to contain any amount of dangerous drug not
16 otherwise provided for in this subsection (2).

17 (3) The tax imposed pursuant to this section must be
18 collected only after any state or federal FINES OR
19 forfeitures have been satisfied.

20 NEW SECTION. Section 4. Exemptions. The tax imposed
21 pursuant to [section 3] does not apply to any person
22 authorized by state or federal law to possess or store
23 dangerous drugs. The burden of proof of an exemption from
24 [section 3] is on the person claiming it.

25 NEW SECTION. Section 5. ~~Statement of tax--A--written~~

1 ~~statement--of--the--assessment--and--tax--due--under--{section--3}~~
 2 ~~must--be--presented--to--the--taxpayer--by--the--department--~~
 3 ~~ADMINISTRATION AND ENFORCEMENT -- DEPARTMENT RULES. (1) ALL~~
 4 ~~LAW ENFORCEMENT PERSONNEL AND PEACE OFFICERS SHALL PROMPTLY~~
 5 ~~REPORT EACH PERSON SUBJECT TO THE TAX TO THE DEPARTMENT,~~
 6 ~~TOGETHER WITH SUCH OTHER INFORMATION WHICH THE DEPARTMENT~~
 7 ~~MAY REQUIRE, IN A MANNER AND ON A FORM PRESCRIBED BY THE~~
 8 ~~DEPARTMENT.~~

9 (2) ~~THE DEFICIENCY ASSESSMENT PROVISIONS OF 15-53-105,~~
 10 ~~THE CIVIL PENALTY AND INTEREST PROVISIONS OF 15-53-111, THE~~
 11 ~~CRIMINAL PENALTY PROVISIONS OF 15-30-321(3), THE ESTIMATION~~
 12 ~~OF TAX PROVISIONS OF 15-53-112, AND THE STATUTE OF~~
 13 ~~LIMITATIONS PROVISIONS OF 15-53-115 APPLY TO THIS TAX AND~~
 14 ~~ARE FULLY INCORPORATED BY REFERENCE IN THIS CHAPTER. THE~~
 15 ~~DEPARTMENT MAY ADOPT SUCH RULES AS ARE NECESSARY TO~~
 16 ~~ADMINISTER AND ENFORCE THE TAX.~~

17 ~~NEW SECTION. Section 6. Tax appeal. A person~~
 18 ~~aggrieved by an assessment pursuant to [section 3] or an~~
 19 ~~exemption decision pursuant to [section 4] may appeal the~~
 20 ~~assessment or exemption decision pursuant to Title 15,~~
 21 ~~chapter 2, part 3.~~

22 ~~NEW SECTION. Section 7. Tax--lien---The--tax--imposed~~
 23 ~~pursuant--to--{section--3},--together--with--interest--and~~
 24 ~~penalties,--is--a--lien--in--favor--of--the--state--as--provided--in~~
 25 ~~Title--15,--chapter--16,--part--4. The--lien--attaches--at--the--time~~

1 ~~the--tax--is--assessed--and--is--enforceable--in--the--same--manner--as~~
 2 ~~other--tax--liens. WARRANT FOR DISTRAINT. IF ALL OR PART OF~~
 3 ~~THE TAX IMPOSED BY THIS CHAPTER IS NOT PAID WHEN DUE, THE~~
 4 ~~DEPARTMENT MAY ISSUE A WARRANT FOR DISTRAINT AS PROVIDED IN~~
 5 ~~TITLE 15, CHAPTER 1, PART 7. THE RESULTING LIEN SHALL HAVE~~
 6 ~~PRECEDENCE OVER ANY OTHER CLAIM, LIEN, OR DEMAND THEREAFTER~~
 7 ~~FILED AND RECORDED.~~

8 ~~NEW SECTION. Section 8. Accounts. (1) There is an~~
 9 ~~institutions evaluation special revenue account within the~~
 10 ~~state treasury. One-half of the taxes collected under~~
 11 ~~[section 9] shall be deposited in the account.~~

12 (2) ~~There is a chemical abuse assessment special~~
 13 ~~revenue account within the state treasury. One-half of the~~
 14 ~~taxes collected under [section 9] shall be deposited in the~~
 15 ~~account.~~

16 ~~NEW SECTION. Section 9. Disposition of proceeds. (1)~~
 17 ~~The department shall transfer all taxes collected pursuant~~
 18 ~~to [this act], less the administrative fee authorized in~~
 19 ~~[section 3(1)], to the state treasurer on a monthly basis.~~

20 (2) ~~The state treasurer shall deposit one-half of the~~
 21 ~~tax to the credit of the department of institutions to be~~
 22 ~~used for the youth evaluation program and chemical abuse~~
 23 ~~aftercare programs.~~

24 (3) ~~The treasurer shall credit the remaining one-half~~
 25 ~~of the tax PROCEEDS AS FOLLOWS:~~

1 (A) 85% to the department of justice to be used for
2 grants to youth courts to fund chemical abuse assessments
3 and the detention of juvenile offenders in facilities
4 separate from adult jails; AND

5 (B) 15% TO THE SPECIAL LAW ENFORCEMENT ASSISTANCE
6 ACCOUNT CREATED IN 44-13-101 FOR THE ACTIVITIES DESCRIBED IN
7 44-13-103.

8 NEW SECTION. SECTION 10. SPECIAL REVENUE ACCOUNT. (1)
9 THERE IS CREATED A SPECIAL REVENUE FUND TO BE CALLED THE
10 DANGEROUS DRUG TAX ADMINISTRATION FUND.

11 (2) ALL ADMINISTRATIVE FEES COLLECTED UNDER [SECTION
12 3(1)] SHALL BE DEPOSITED BY THE DEPARTMENT INTO THE
13 DANGEROUS DRUG TAX ADMINISTRATION FUND.

14 (3) THE MONEY IN THE DANGEROUS DRUG TAX ADMINISTRATION
15 FUND MAY BE EXPENDED BY THE DEPARTMENT TO ADMINISTER THE TAX
16 AND PAY ANY REFUND REQUIRED BY THIS CHAPTER.

17 (4) THE APPROPRIATION MADE IN SUBSECTION (3) IS A
18 STATUTORY APPROPRIATION AS PROVIDED IN 17-7-502.

19 SECTION 11. SECTION 17-7-502, MCA, IS AMENDED TO READ:

20 "17-7-502. Statutory appropriations -- definition --
21 requisites for validity. (1) A statutory appropriation is an
22 appropriation made by permanent law that authorizes spending
23 by a state agency without the need for a biennial
24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations:

- 10 (a) 2-9-202;
- 11 (b) 2-17-105;
- 12 (c) 2-18-812;
- 13 (d) 10-3-203;
- 14 (e) 10-3-312;
- 15 (f) 10-3-314;
- 16 (g) 10-4-301;
- 17 (h) 13-37-304;
- 18 (i) 15-31-702;
- 19 (j) 15-36-112;
- 20 (k) 15-70-101;
- 21 (l) 16-1-404;
- 22 (m) 16-1-410;
- 23 (n) 16-1-411;
- 24 (o) 17-3-212;
- 25 (p) 17-5-404;

1 (q) 17-5-424;
 2 (r) 17-5-804;
 3 (s) 19-8-504;
 4 (t) 19-9-702;
 5 (u) 19-9-1007;
 6 (v) 19-10-205;
 7 (w) 19-10-305;
 8 (x) 19-10-506;
 9 (y) 19-11-512;
 10 (z) 19-11-513;
 11 (aa) 19-11-606;
 12 (bb) 19-12-301;
 13 (cc) 19-13-604;
 14 (dd) 20-6-406;
 15 (ee) 20-8-111;
 16 (ff) 23-5-612;
 17 (gg) 37-51-501;
 18 (hh) 53-24-206;
 19 (ii) 75-1-1101;
 20 (jj) 75-7-305;
 21 (kk) 80-2-103;
 22 (ll) 80-2-228;
 23 (mm) 90-3-301;
 24 (nn) 90-3-302;
 25 (oo) 90-15-103; and

1 (pp) Sec. 13, HB 861, L. 1985; and
 2 (qq) [section 10].
 3 (4) There is a statutory appropriation to pay the
 4 principal, interest, premiums, and costs of issuing, paying,
 5 and securing all bonds, notes, or other obligations, as due,
 6 that have been authorized and issued pursuant to the laws of
 7 Montana. Agencies that have entered into agreements
 8 authorized by the laws of Montana to pay the state
 9 treasurer, for deposit in accordance with 17-2-101 through
 10 17-2-107, as determined by the state treasurer, an amount
 11 sufficient to pay the principal and interest as due on the
 12 bonds or notes have statutory appropriation authority for
 13 such payments."
 14 NEW SECTION. Section 12. Codification instruction.
 15 Sections 1 through 9 10 are intended to be codified as an
 16 integral part of Title 15, and the provisions of Title 15
 17 apply to sections 1 through 9 10.

-End-

SENATE

1-1-87

DATE

5:22

TIME

MR. CHAIRMAN: I MOVE TO AMEND House Bill

No. 791

reference reading copy (salmon) as follows:
Color

- 1. Page 4, line 18.
- Following: "federal"
- Insert: "fines or"

CAB

ADOPT
REJECT

Van Valkenburg

Senator Van Valkenburg