

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 612

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FITZWATER (144).

1358H.03P

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 221.111 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and sections 217.360 and 221.407, RSMo, and to enact in lieu thereof three new sections relating to correctional facilities, with penalty provisions.

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

Section A. Section 221.111 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and 217.360 and 221.407, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 217.360, 221.111, and 221.407 to read as follows:

217.360. 1. It shall be an offense for any person to knowingly deliver, attempt to deliver, have in his possession, deposit or conceal in or about the premises of any correctional center, or city or county jail, or private prison or jail:

(1) Any controlled substance as that term is defined by law, except upon the written prescription of a licensed physician, dentist, or veterinarian;

(2) Any other alkaloid of any controlled substance, any spirituous or malt liquor, or any intoxicating liquor as defined in section 311.020;

(3) Any article or item of personal property which an offender is prohibited by law or by rule and regulation of the division from receiving or possessing;

(4) Any gun, knife, weapon, or other article or item of personal property that may be used in such manner as to endanger the safety or security of the correctional center, or city or

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

12 county jail, or private prison or jail or as to endanger the life or limb of any offender or employee  
13 of such a center; **or**

14 **(5) Any two-way telecommunications device or its component parts.**

15 2. The violation of subdivision (1) of subsection 1 of this section shall be a class C  
16 felony; the violation of subdivision (2) **or (5)** of subsection 1 of this section shall be a class D  
17 felony; the violation of subdivision (3) of subsection 1 of this section shall be a class A  
18 misdemeanor; and the violation of subdivision (4) of subsection 1 of this section shall be a class  
19 B felony.

20 3. Any person who has been found guilty of or has pled guilty to a violation of  
21 subdivision (2) of subsection 1 of this section involving any alkaloid shall be entitled to  
22 expungement of the record of the violation. The procedure to expunge the record shall be  
23 pursuant to section 610.123. The record of any person shall not be expunged if such person has  
24 been found guilty of or has pled guilty to knowingly delivering, attempting to deliver, having in  
25 his possession, or depositing or concealing any alkaloid of any controlled substance in or about  
26 the premises of any correctional center, or city or county jail, or private prison or jail.

27 **4. Subdivision (5) of subsection 1 of this section shall not apply to:**

28 **(1) Any law enforcement officer employed by a state, federal agency, or political**  
29 **subdivision lawfully engaged in his or her duties as a law enforcement officer; or**

30 **(2) Any other person who is authorized by the correctional center, city or county**  
31 **jail, or private prison to possess or use a two-way telecommunications device in the**  
32 **correctional center, city or county jail, or private prison or jail.**

221.111. 1. A person commits the offense of possession of unlawful items in a prison  
2 or jail if such person knowingly delivers, attempts to deliver, possesses, deposits, or conceals in  
3 or about the premises of any correctional center as the term "correctional center" is defined under  
4 section 217.010, or any city, county, or private jail:

5 (1) Any controlled substance as that term is defined by law, except upon the written  
6 prescription of a licensed physician, dentist, or veterinarian;

7 (2) Any other alkaloid of any kind or any intoxicating liquor as the term intoxicating  
8 liquor is defined in section 311.020;

9 (3) Any article or item of personal property which a prisoner is prohibited by law, by rule  
10 made pursuant to section 221.060, or by regulation of the department of corrections from  
11 receiving or possessing, except as herein provided;

12 (4) Any gun, knife, weapon, or other article or item of personal property that may be  
13 used in such manner as to endanger the safety or security of the institution or as to endanger the  
14 life or limb of any prisoner or employee thereof;

15 **(5) Any two-way telecommunications device or its component parts.**

16           2. The violation of subdivision (1) of subsection 1 of this section shall be a class D  
17 felony; the violation of subdivision (2) **or (5) of subsection 1** of this section shall be a class E  
18 felony; the violation of subdivision (3) **of subsection 1** of this section shall be a class A  
19 misdemeanor; and the violation of subdivision (4) **of subsection 1** of this section shall be a class  
20 B felony.

21           3. The chief operating officer of a county or city jail or other correctional facility or the  
22 administrator of a private jail may deny visitation privileges to or refer to the county prosecuting  
23 attorney for prosecution any person who knowingly delivers, attempts to deliver, possesses,  
24 deposits, or conceals in or about the premises of such jail or facility any personal item which is  
25 prohibited by rule or regulation of such jail or facility. Such rules or regulations, including a list  
26 of personal items allowed in the jail or facility, shall be prominently posted for viewing both  
27 inside and outside such jail or facility in an area accessible to any visitor, and shall be made  
28 available to any person requesting such rule or regulation. Violation of this subsection shall be  
29 an infraction if not covered by other statutes.

30           4. Any person who has been found guilty of a violation of subdivision (2) of subsection  
31 1 of this section involving any alkaloid shall be entitled to expungement of the record of the  
32 violation. The procedure to expunge the record shall be pursuant to section 610.123. The record  
33 of any person shall not be expunged if such person has been found guilty of knowingly  
34 delivering, attempting to deliver, possessing, depositing, or concealing any alkaloid of any  
35 controlled substance in or about the premises of any correctional center, or city or county jail,  
36 or private prison or jail.

37           **5. Subdivision (5) of subsection 1 of this section shall not apply to:**

38           **(1) Any law enforcement officer employed by a state, federal agency, or political**  
39 **subdivision lawfully engaged in his or her duties as a law enforcement officer; or**

40           **(2) Any other person who is authorized by the correctional center, or city, county,**  
41 **or private jail to possess or use a two-way telecommunications device in the correctional**  
42 **center, or city, county, or private jail.**

221.407. 1. The commission of any regional jail district may impose, by order, a sales  
2 tax in the amount of one-eighth of one percent, one-fourth of one percent, three-eighths of one  
3 percent, or one-half of one percent on all retail sales made in such region which are subject to  
4 taxation pursuant to the provisions of sections 144.010 to 144.525 for the purpose of providing  
5 jail services and court facilities and equipment for such region. The tax authorized by this  
6 section shall be in addition to any and all other sales taxes allowed by law, except that no order  
7 imposing a sales tax pursuant to this section shall be effective unless the commission submits  
8 to the voters of the district, on any election date authorized in chapter 115, a proposal to  
9 authorize the commission to impose a tax.

10           2. The ballot of submission shall contain, but need not be limited to, the following  
11 language:

12

13           Shall the regional jail district of ..... (counties' names) impose a region-wide  
14 sales tax of ..... (insert amount) for the purpose of providing jail services and court  
15 facilities and equipment for the region?

16

17            YES                            NO

18 If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed  
19 to the question, place an "X" in the box opposite "No".

20 If a majority of the votes cast on the proposal by the qualified voters of the district voting thereon  
21 are in favor of the proposal, then the order and any amendment to such order shall be in effect  
22 on the first day of the second quarter immediately following the election approving the proposal.

23 If the proposal receives less than the required majority, the commission shall have no power to  
24 impose the sales tax authorized pursuant to this section unless and until the commission shall  
25 again have submitted another proposal to authorize the commission to impose the sales tax  
26 authorized by this section and such proposal is approved by the required majority of the qualified  
27 voters of the district voting on such proposal; however, in no event shall a proposal pursuant to  
28 this section be submitted to the voters sooner than twelve months from the date of the last  
29 submission of a proposal pursuant to this section.

30           3. All revenue received by a district from the tax authorized pursuant to this section shall  
31 be deposited in a special trust fund and shall be used solely for providing jail services and court  
32 facilities and equipment for such district for so long as the tax shall remain in effect.

33           4. Once the tax authorized by this section is abolished or terminated by any means, all  
34 funds remaining in the special trust fund shall be used solely for providing jail services and court  
35 facilities and equipment for the district. Any funds in such special trust fund which are not  
36 needed for current expenditures may be invested by the commission in accordance with  
37 applicable laws relating to the investment of other county funds.

38           5. All sales taxes collected by the director of revenue pursuant to this section on behalf  
39 of any district, less one percent for cost of collection which shall be deposited in the state's  
40 general revenue fund after payment of premiums for surety bonds as provided in section 32.087,  
41 shall be deposited in a special trust fund, which is hereby created, to be known as the "Regional  
42 Jail District Sales Tax Trust Fund". The moneys in the regional jail district sales tax trust fund  
43 shall not be deemed to be state funds and shall not be commingled with any funds of the state.  
44 The director of revenue shall keep accurate records of the amount of money in the trust fund  
45 which was collected in each district imposing a sales tax pursuant to this section, and the records

46 shall be open to the inspection of officers of each member county and the public. Not later than  
47 the tenth day of each month the director of revenue shall distribute all moneys deposited in the  
48 trust fund during the preceding month to the district which levied the tax. Such funds shall be  
49 deposited with the treasurer of each such district, and all expenditures of funds arising from the  
50 regional jail district sales tax trust fund shall be paid pursuant to an appropriation adopted by the  
51 commission and shall be approved by the commission. Expenditures may be made from the fund  
52 for any function authorized in the order adopted by the commission submitting the regional jail  
53 district tax to the voters.

54           6. The director of revenue may [authorize the state treasurer to] make refunds from the  
55 amounts in the trust fund and credited to any district for erroneous payments and overpayments  
56 made, and may redeem dishonored checks and drafts deposited to the credit of such districts.  
57 If any district abolishes the tax, the commission shall notify the director of revenue of the action  
58 at least ninety days prior to the effective date of the repeal, and the director of revenue may order  
59 retention in the trust fund, for a period of one year, of two percent of the amount collected after  
60 receipt of such notice to cover possible refunds or overpayment of the tax and to redeem  
61 dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed  
62 after the effective date of abolition of the tax in such district, the director of revenue shall remit  
63 the balance in the account to the district and close the account of that district. The director of  
64 revenue shall notify each district in each instance of any amount refunded or any check redeemed  
65 from receipts due the district.

66           7. Except as provided in this section, all provisions of sections 32.085 and 32.087 shall  
67 apply to the tax imposed pursuant to this section.

68           8. The provisions of this section shall expire September 30, [2015] **2027**.

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