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FISCAL IMPACT STATEMENT

LS 6353

BILL NUMBER: HB 1271

NOTE PREPARED: Apr 14, 2009

BILL AMENDED: Apr 13, 2009

SUBJECT: Retail Consignment Sales.

FIRST AUTHOR: Rep. Pelath

FIRST SPONSOR: Sen. Buck

BILL STATUS: As Passed Senate

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State and Local

Summary of Legislation: (Amended) *Consignment Sales:* The bill provides that if a person delivers an item with a value of at least \$50 to a retail merchant for exhibition or sale on commission, the item is considered to be for sale on consignment unless the person is paid in full upon delivery. It provides that the item and the proceeds due the consignor from the sale of the item are property held in trust for the consignor by the retail merchant and are not subject to seizure or encumbrance by a creditor of the retail merchant. It also permits a retail merchant to accept an item for consignment only if a written contract containing certain provisions is executed. The bill specifically exempts items sold at auction from the non-tax provisions of this act, and specifies that if a provision of this act conflicts with the Uniform Commercial Code (UCC), the UCC controls.

Collection of Sales Tax on Consignment Sales: The bill requires a retail merchant that is a consignee to collect and remit the state gross retail tax on the gross retail income received in a consignment sale. It also requires the retail merchant to provide a consignor customer an invoice that shows that the state gross retail tax was paid to the consignee retail merchant with a clear notation on the invoice that the item was a consignment sale by the retail merchant on behalf of the seller to the purchaser.

Effective Date: July 1, 2009.

Explanation of State Expenditures:

Explanation of State Revenues: *Collection of Sales Tax on Consignment Sales:* The bill specifically requires that a retail merchant who is a consignee in a retail transaction must collect and remit sales tax on a consignment sale. The Department of State Revenue is interpreting current statute to require consignees

to collect and remit sales tax on consignment sales. According to Part IV of the Department of Revenue's Information Bulletin Number 20 (May 2007), "[t]he sale of consigned tangible personal property is a retail sale and the consignee must register as a retail merchant and must collect and remit sales tax."

The bill also requires the retail merchant (consignee) to provide the consignor purchaser an invoice showing that the sales tax was paid to the retail merchant and a notation that the sale was a consignment sale on behalf of the seller and purchaser, with both parties named on the invoice.

(Revised) *Civil Actions Relating to Consignment Agreements*: The bill provides that a retail merchant may accept an item for commission on consignment from a person only if the retail merchant enters into a written contract with the person regarding the consignment sale of the item. The bill also provides that a retail merchant who violates this provision is liable to the consignor in the amount of \$50, actual, consequential, or incidental damages, and reasonable attorney's fees.

If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures:

Explanation of Local Revenues: (Revised) *Civil Actions Relating to Consignment Agreements*: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: Department of State Revenue, Information Bulletin #20: Sales Tax, May 2007. Department of State Revenue, Letter of Findings: 07-0329.

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