

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 190

Short Title: Illegal Liquor Tax.

(Public)

Sponsors: Representatives Dickson; and Bowman.

Referred to: Rules, Calendar, and Operations of the House.

February 14, 1994

A BILL TO BE ENTITLED
AN ACT TO LEVY AN EXCISE TAX ON ILLEGAL SPIRITUOUS LIQUOR AND
AN EXCISE TAX ON MASH.

The General Assembly of North Carolina enacts:

Section 1. Article 2D of Chapter 105 of the General Statutes reads as
rewritten:

**"ARTICLE 2D.
"SCHEDULE B-D. CONTROLLED-SUBSTANCE TAX.
"ILLEGAL SUBSTANCES TAXES.**

"§ 105-113.105. Purpose.

The purpose of this Article is to levy an excise tax on persons who possess ~~controlled substances and counterfeit controlled substances~~ certain illegal substances in violation of North Carolina law and to provide that a person who possesses ~~such these~~ these substances in violation of this Article is guilty of a felony. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

"§ 105-113.106. Definitions.

The following definitions apply in this Article:

- (1) Controlled Substance. – Defined in G.S. 90-87.
- (2) Counterfeit Controlled Substance. – Defined in G.S. 90-87.
- (3) Dealer. – Any of the following:

a. A person who in violation of G.S. 90-95 possesses, delivers, sells, or manufactures more than 42.5 grams of marijuana, or seven or more grams of any other controlled substance or

1 counterfeit controlled substance that is sold by weight, or 10 or
2 more dosage units of any other controlled substance or
3 counterfeit controlled substance that is not sold by weight.

4 b. A person who in violation of Chapter 18B of the General
5 Statutes possesses for sale, sells, or manufactures illegal
6 spirituous liquor.

7 c. A person who in violation of Chapter 18B of the General
8 Statutes possesses or sells mash.

9 (4) Deliver. – Defined in G.S. 90-87.

10 (4a) Illegal Spirituous Liquor. – Spirituous liquor, as defined in G.S. 105-
11 113.68, not authorized by the North Carolina Alcoholic Beverage
12 Control Commission. Some examples of illegal spirituous liquor are
13 the products known as 'bootleg liquor', 'moonshine', 'non-tax-paid
14 liquor', and 'white liquor'.

15 (4b) Illegal Substance. – A controlled substance, a counterfeit controlled
16 substance, illegal spirituous liquor, or mash.

17 (5) Manufacture. —Defined—With regard to controlled substances and
18 counterfeit controlled substances, defined in G.S. 90-87. With regard
19 to illegal spirituous liquor, to take action that creates or is designed to
20 create spirituous liquor by fermentation or distillation.

21 (6) Marijuana. – Defined in G.S. 90-87.

22 (6a) Mash. – The fermentable starchy mixture from which spirituous liquor
23 can be distilled.

24 (7) Person. – Defined in G.S. 105-228.90.

25 (8) Secretary. – The Secretary of ~~the Department of~~ Revenue.

26 **"§ 105-113.107. Excise tax on ~~controlled~~ illegal substances.**

27 (a) Controlled Substances. – An excise tax is levied on controlled substances and
28 counterfeit controlled substances possessed by dealers at the following rates:

29 (1) At the rate of three dollars and fifty cents (\$3.50) for each gram, or
30 fraction thereof, of marijuana or counterfeit marijuana.

31 (2) At the rate of two hundred dollars (\$200.00) for each gram, or fraction
32 thereof, of any other controlled substance or counterfeit controlled
33 substance that is sold by weight.

34 (3) At the rate of four hundred dollars (\$400.00) for each 10 dosage units,
35 or fraction thereof, of any other controlled substance or counterfeit
36 controlled substance that is not sold by weight.

37 A quantity of marijuana or other controlled substance is measured by the weight of
38 the substance whether pure or impure or dilute, or by dosage units when the substance is
39 not sold by weight, in the dealer's possession. A quantity of a controlled substance is
40 dilute if it consists of a detectable quantity of pure controlled substance and any
41 excipients or fillers.

42 (b) Illegal Spirituous Liquor. – An excise tax is levied on illegal spirituous liquor
43 possessed by a dealer at the following rates:

- 1 (1) At the rate of thirty-one dollars and seventy cents (\$31.70) for each
2 gallon, or fraction thereof, of illegal spirituous liquor sold by the drink.
3 (2) At the rate of twelve dollars and eighty cents (\$12.80) for each gallon,
4 or fraction thereof, of illegal spirituous liquor not sold by the drink.
5 (c) Mash. – An excise tax is levied on mash possessed by a dealer at the rate of
6 one dollar and twenty-eight cents (\$1.28) for each gallon or fraction thereof.

7 **"§ 105-113.108. Reports; revenue stamps.**

8 The Secretary shall issue stamps to affix to ~~controlled substances and counterfeit~~
9 ~~controlled-illegal~~ substances to indicate payment of the tax required by this Article.
10 Dealers shall report the taxes payable under this Article at the time and on the form
11 prescribed by the Secretary. Dealers are not required to give their name, address, social
12 security number, or other identifying information on the form. Upon payment of the
13 tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid.
14 Taxes may be paid and stamps may be issued either by mail or in person.

15 **"§ 105-113.109. When tax payable.**

16 The tax imposed by this Article is payable by any dealer who possesses a ~~controlled~~
17 ~~substance or counterfeit controlled-an illegal~~ substance in this State upon which the tax has
18 not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the
19 dealer acquires a non-tax-paid ~~controlled substance or counterfeit controlled-illegal~~
20 substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which
21 case the tax is payable on the next working day. Upon payment of the tax, the dealer
22 shall permanently affix the appropriate stamps to the ~~controlled-illegal~~ substance. Once
23 the tax due on a ~~controlled substance or counterfeit controlled-an illegal~~ substance has been
24 paid, no additional tax is due under this Article even though the ~~controlled substance or~~
25 ~~counterfeit controlled-illegal~~ substance may be handled by other dealers.

26 **"§ 105-113.110. Violations of Article a felony.**

27 (a) A dealer who possesses ~~marijuana or any other controlled substance or counterfeit~~
28 ~~controlled-an illegal~~ substance upon which the tax due under this Article has not been
29 paid, as evidenced by a stamp, is guilty of a Class I felony.

30 (b) Notwithstanding any other provision of law, no prosecution for a violation of
31 this Article shall be barred before the expiration of six years after the date of the
32 violation.

33 **"§ 105-113.110A. Interest and penalty.**

34 The tax due under this Article shall bear interest at the rate established pursuant to
35 G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects,
36 fails, or refuses to pay the tax due under this Article is liable for a penalty equal to one
37 hundred percent (100%) of the tax.

38 **"§ 105-113.111. Assessments.**

39 ~~(a)~~ Notwithstanding any other provision of law, an assessment against a dealer
40 who possesses a ~~controlled-an illegal~~ substance to which a stamp has not been affixed as
41 required by this Article shall be made as provided in this section. The Secretary shall
42 assess a tax, applicable penalties, and interest based on personal knowledge or
43 information available to the Secretary. The Secretary shall notify the dealer in writing of
44 the amount of the tax, penalty, and interest due, and demand its immediate payment.

1 The notice and demand shall be either mailed to the dealer at the dealer's last known
2 address or served on the dealer in person. If the dealer does not pay the tax, penalty, and
3 interest immediately upon receipt of the notice and demand, the Secretary shall collect
4 the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for
5 jeopardy assessments or the procedure set forth in G.S. 105-242, including causing
6 execution to be issued immediately against the personal property of the dealer unless the
7 dealer files with the Secretary a bond in the amount of the asserted liability for the tax,
8 penalty, and interest. The Secretary shall use all means available to collect the tax,
9 penalty, and interest from any property in which the dealer has a legal, equitable, or
10 beneficial interest. The dealer may seek review of the assessment as provided in Article
11 9 of this Chapter.

12 (b) ~~Reserved.~~

13 **"§ 105-113.112. Confidentiality of information.**

14 Notwithstanding any other provision of law, information obtained pursuant to this
15 Article is confidential and may not be disclosed or, unless independently obtained, used
16 in a criminal prosecution other than a prosecution for a violation of this Article. Stamps
17 issued pursuant to this Article may not be used in a criminal prosecution other than a
18 prosecution for a violation of this Article. A person who discloses information obtained
19 pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not
20 prohibit the Secretary from publishing statistics that do not disclose the identity of
21 dealers or the contents of particular returns or reports.

22 **"§ 105-113.113. Use of tax proceeds.**

23 The Secretary shall credit the proceeds of the tax levied by this Article to a special
24 nonreverting account, to be called the State ~~Controlled-Illegal~~ Substances Tax Account,
25 until the tax proceeds are unencumbered. Tax proceeds are unencumbered when the
26 taxpayer no longer has a current right to challenge the assessment of the tax.

27 The Secretary shall, on a quarterly basis, remit the unencumbered tax proceeds as
28 follows: seventy-five percent (75%) of the amount collected by assessment shall be
29 remitted to the State or local law enforcement agency that conducted the investigation
30 of a dealer that led to the assessment; and the remainder of the unencumbered tax
31 proceeds shall be credited to the General Fund. If more than one State or local law
32 enforcement agency conducted the investigation, the Secretary shall determine the
33 equitable pro rata share for each agency based on the contribution each agency made to
34 the investigation."

35 Sec. 2. This act becomes effective October 1, 1994.