

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1013

Short Title: Illegal Liquor Tax.

(Public)

Sponsors: Representatives Kiser; Barbee, J. Brown, Cansler, Capps, Cocklereece, Culp, Cummings, Davis, Dickson, Justus, Linney, Pate, Rayfield, Reynolds, Sexton, Sharpe, Shubert, Tallent, Weatherly, and G. Wilson.

Referred to: Finance.

May 4, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO LEVY AN EXCISE TAX ON ILLEGAL SPIRITUOUS LIQUOR, AN
3 EXCISE TAX ON MASH, AND AN EXCISE TAX ON ILLEGAL MIXED
4 BEVERAGES.

5 The General Assembly of North Carolina enacts:

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

8 "ARTICLE 2D.

9 "~~SCHEDULE B-D. CONTROLLED SUBSTANCE TAX.~~

10 "ILLEGAL SUBSTANCES TAXES.

11 "§ 105-113.105. Purpose.

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

18 "§ 105-113.106. Definitions.

1 The following definitions apply in this Article:

- 2 (1) ~~Controlled Substance.~~ substance. – Defined in G.S. 90-87.
- 3 (2) ~~Controlled Substance.~~ controlled substance. – Defined in G.S.
- 4 90-87.
- 5 (3) Dealer. – Any of the following:
- 6 a. A person who in violation of G.S. 90-95 possesses, delivers,
- 7 sells, or manufactures more than 42.5 grams of marijuana, or
- 8 seven or more grams of any other controlled substance or
- 9 counterfeit controlled substance that is sold by weight, or 10 or
- 10 more dosage units of any other controlled substance or
- 11 counterfeit controlled substance that is not sold by weight.
- 12 b. A person who in violation of Chapter 18B of the General Statutes
- 13 possesses for sale, sells, or manufactures illegal spirituous liquor.
- 14 c. A person who in violation of Chapter 18B of the General Statutes
- 15 possesses or sells mash.
- 16 d. A person who in violation of Chapter 18B of the General Statutes
- 17 possesses for sale or sells an illegal mixed beverage.
- 18 (4) Deliver. – Defined in G.S. 90-87.
- 19 (4a) Illegal mixed beverage. – A mixed beverage, as defined in G.S. 18B-
- 20 101, composed in whole or in part from spirituous liquor on which the
- 21 charge imposed by G.S. 18B-804(b)(8) has not been paid, but not
- 22 including a premixed cocktail served from a closed package containing
- 23 only one serving.
- 24 (4b) Illegal spirituous liquor. – Spirituous liquor, as defined in G.S. 105-
- 25 113.68, not authorized by the North Carolina Alcoholic Beverage
- 26 Control Commission. Some examples of illegal spirituous liquor are the
- 27 products known as 'bootleg liquor', 'moonshine', 'non-tax-paid liquor',
- 28 and 'white liquor'.
- 29 (4c) Illegal substance. – A controlled substance, a counterfeit controlled
- 30 substance, an illegal mixed beverage, illegal spirituous liquor, or mash.
- 31 (5) Manufacture. — ~~Defined~~ With regard to controlled substances and
- 32 counterfeit controlled substances, defined in G.S. 90-87. With regard to
- 33 illegal spirituous liquor, to take action that creates or is designed to
- 34 create spirituous liquor by fermentation or distillation.
- 35 (6) Marijuana. – Defined in G.S. 90-87.
- 36 (6a) Mash. – The fermentable starchy mixture from which spirituous liquor
- 37 can be distilled.
- 38 (7) Person. – Defined in G.S. 105-228.90.
- 39 (8) Secretary. – The Secretary of ~~the Department of~~ Revenue.

40 **"§ 105-113.107. Excise tax on ~~controlled~~ illegal substances.**

41 (a) Controlled Substances. – An excise tax is levied on controlled substances and

42 counterfeit controlled substances possessed by dealers at the following rates:

- 1 (1) At the rate of three dollars and fifty cents (\$3.50) for each gram, or
2 fraction thereof, of marijuana or counterfeit marijuana.
- 3 (2) At the rate of two hundred dollars (\$200.00) for each gram, or fraction
4 thereof, of any other controlled substance or counterfeit controlled
5 substance that is sold by weight.
- 6 (3) At the rate of four hundred dollars (\$400.00) for each 10 dosage units,
7 or fraction thereof, of any other controlled substance or counterfeit
8 controlled substance that is not sold by weight.

9 A quantity of marijuana or other controlled substance is measured by the weight of
10 the substance whether pure or impure or dilute, or by dosage units when the substance is
11 not sold by weight, in the dealer's possession. A quantity of a controlled substance is
12 dilute if it consists of a detectable quantity of pure controlled substance and any
13 excipients or fillers.

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

- 16 (1) At the rate of thirty-one dollars and seventy cents (\$31.70) for each
17 gallon, or fraction thereof, of illegal spirituous liquor sold by the drink.
- 18 (2) At the rate of twelve dollars and eighty cents (\$12.80) for each gallon,
19 or fraction thereof, of illegal spirituous liquor not sold by the drink.

20 (c) Mash. – An excise tax is levied on mash possessed by a dealer at the rate of
21 one dollar and twenty-eight cents (\$1.28) for each gallon or fraction thereof.

22 (d) Illegal Mixed Beverages. – A tax is levied on illegal mixed beverages sold by a
23 dealer at the rate of twenty dollars (\$20.00) on each four liters and a proportional sum on
24 lesser quantities.

25 **"§ 105-113.108. Reports; revenue stamps.**

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

33 **"§ 105-113.109. When tax payable.**

34 The tax imposed by this Article is payable by any dealer who possesses a ~~controlled~~
35 ~~substance or counterfeit controlled-an illegal~~ substance in this State upon which the tax has
36 not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the
37 dealer acquires a non-tax-paid ~~controlled substance or counterfeit controlled-illegal~~
38 substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which
39 case the tax is payable on the next working day. Upon payment of the tax, the dealer
40 shall permanently affix the appropriate stamps to the ~~controlled-illegal~~ substance. Once
41 the tax due on a ~~controlled substance or counterfeit controlled-an illegal~~ substance has been
42 paid, no additional tax is due under this Article even though the ~~controlled substance or~~
43 ~~counterfeit controlled-illegal~~ substance may be handled by other dealers.

1 **"§ 105-113.110. Violations of Article a felony.**

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

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

8 **"§ 105-113.110A. Interest and penalty.**

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

13 **"§ 105-113.111. Assessments.**

14 (a) Notwithstanding any other provision of law, an assessment against a dealer
15 who possesses ~~a controlled~~ an illegal substance to which a stamp has not been affixed as
16 required by this Article shall be made as provided in this section. The Secretary shall
17 assess a tax, applicable penalties, and interest based on personal knowledge or
18 information available to the Secretary. The Secretary shall notify the dealer in writing of
19 the amount of the tax, penalty, and interest due, and demand its immediate payment. The
20 notice and demand shall be either mailed to the dealer at the dealer's last known address
21 or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest
22 immediately upon receipt of the notice and demand, the Secretary shall collect the tax,
23 penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy
24 assessments or the procedure set forth in G.S. 105-242, including causing execution to be
25 issued immediately against the personal property of the dealer unless the dealer files with
26 the Secretary a bond in the amount of the asserted liability for the tax, penalty, and
27 interest. The Secretary shall use all means available to collect the tax, penalty, and
28 interest from any property in which the dealer has a legal, equitable, or beneficial interest.
29 The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

30 (b) ~~Reserved.~~

31 **"§ 105-113.112. Confidentiality of information.**

32 Notwithstanding any other provision of law, information obtained pursuant to this
33 Article is confidential and may not be disclosed or, unless independently obtained, used
34 in a criminal prosecution other than a prosecution for a violation of this Article. Stamps
35 issued pursuant to this Article may not be used in a criminal prosecution other than a
36 prosecution for a violation of this Article. A person who discloses information obtained
37 pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit
38 the Secretary from publishing statistics that do not disclose the identity of dealers or the
39 contents of particular returns or reports.

40 **"§ 105-113.113. Use of tax proceeds.**

41 The Secretary shall credit the proceeds of the tax levied by this Article to a special
42 nonreverting account, to be called the State ~~Controlled-Illegal~~ Substances Tax Account,

1 until the tax proceeds are unencumbered. Tax proceeds are unencumbered when the
2 taxpayer no longer has a current right to challenge the assessment of the tax.

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

10 Sec. 2. This act becomes effective October 1, 1995.