GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1039
HOUSE BILL 2375

AN ACT TO ENACT THE 1990 OMNIBUS DRUG ACT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Omnibus Drug Act of 1990.

–-TO PROVIDE THAT THE INVESTIGATING LAW ENFORCEMENT AGENCY SHALL RECEIVE SEVENTY-FIVE PERCENT OF THE MONIES COLLECTED BY AN ASSESSMENT UNDER THE CONTROLLED SUBSTANCE TAX LAW.

Sec. 2. Effective upon ratification and retroactive to January 1, 1990, G.S. 105-113.111 reads as rewritten:

"**§ 105-113.111. Assessments.**

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

(b) Of the monies collected pursuant to subsection (a), seventy-five percent (75%) shall be remitted to the State or local law enforcement agency that conducted the investigation of the dealer that led to the assessment under subsection (a). If more than one State or local law enforcement agency conducted the investigation, the Secretary of the Department of Revenue shall determine the equitable pro rata share for each agency based on the contribution each agency made to the investigation."

–-TO REQUIRE CONVICTED DRUG OFFENDERS TO MAKE RESTITUTION OF ONE HUNDRED DOLLARS TO PAY FOR THE COSTS OF LAB FACILITIES AT THE STATE BUREAU OF INVESTIGATION.

Sec. 3. Effective upon ratification and applying to offenses occurring on or after that date, G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover ~~purchases.~~ purchases; restitution for drug analyses.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund."

–-TO EXTEND THE LAW PERMITTING GRAND JURIES TO INVESTIGATE DRUG TRAFFICKING.

Sec. 4. Section 6 of Chapter 843 of the 1985 Session Laws, as amended by Chapter 1040 of the 1987 Session Laws is amended by deleting "shall expire October 1, 1991" and substituting "shall expire October 1, 1993".

–-TO PROHIBIT POSSESSION OR DISTRIBUTION OF PRECURSOR CHEMICALS WITH INTENT TO MANUFACTURE ILLEGAL CONTROLLED SUBSTANCE.

Sec. 5. Effective October 1, 1990, and applying to offenses occurring on or after that date, G.S. 90-95 is amended by adding two new subsections to read:

"(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.

(11) Isosafrole.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(28) Safrole.
(29) Thionylchloride."

–-TO PROVIDE ENHANCED MANDATORY MINIMUM SENTENCES FOR HABITUAL DRIVING WHILE IMPAIRED VIOLATORS.

Sec. 6. Effective October 1, 1990, G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating ~~Factors.~~ Factors; Habitual Offender. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two ~~or more~~ prior offenses involving impaired ~~driving, if~~ driving and the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment under subsection (g) if he determines that two or more of the following grossly aggravating factors apply:

(1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years before the date of the offense for which the defendant is being sentenced.
(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h). In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigation factors in subsections (d) and (e) in determining the appropriate sentence. If there are no

grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f)."

Sec. 7. Effective October 1, 1990, Chapter 20 of the General Statutes is amended by adding the following new section:

"**§ 20-138.5. Habitual impaired driving.**

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class J felon and shall be sentenced to a minimum term of one year of imprisonment which shall not be suspended. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(d) A person convicted under this section shall have his license permanently revoked."

–-TO PROVIDE THAT REGISTERS OF DEEDS SHALL DISTRIBUTE WITH MARRIAGE LICENSES INFORMATION ON POTENTIAL HARM TO CHILDREN FROM PRE-BIRTH EXPOSURE TO DRUG AND ALCOHOL ABUSE.

Sec. 8. Effective January 1, 1991, G.S. 161-11.1 reads as rewritten:

"**§ 161-11.1. Fees for Children's Trust Fund.**

(a) Five dollars ($5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days ~~of~~ after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

(b) The register of deeds shall distribute with each marriage license issued a pamphlet promoting the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother. The pamphlet to be distributed shall be prepared and paid for by the Department of Environment, Health, and Natural Resources, which shall forward the requisite number of copies to the register of deeds of each county. The funds necessary to prepare and distribute this pamphlet shall not come from the Children's Trust Fund."

Sec. 9. No additional funds shall be appropriated to carry out the requirements of Section 8 of this act.

Sec. 10. Except as otherwise provided herein, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.