

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 735

Short Title: Controlled Substance Tax.

(Public)

Sponsors: Senators Conder, Plyler, Daniel, Sands; Ballance, Barker, Basnight, Block, Ezzell, Guy, Harris, Hunt of Durham, Hunt of Moore, Johnson of Wake, Kaplan, Martin of Pitt, Martin of Guilford, Marvin, Murphy, Odom, Parnell, Rauch, Richardson, Royall, Soles, Speed, Swain, Taft, Tally, Walker, Ward, and Winner.

Referred to: Judiciary I.

April 3, 1989

A BILL TO BE ENTITLED

AN ACT TO IMPOSE AN EXCISE TAX ON CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

**“ARTICLE 2D.**

**“SCHEDULE B-D. CONTROLLED SUBSTANCE TAX.**

**“§ 105-113.90. Purpose.**

The purpose of this Article is to levy an excise tax on persons who possess controlled substances and counterfeit controlled substances in violation of North Carolina law and to provide that a person who possesses such 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.

**“§ 105-113.91. 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. A person who possesses, delivers, sells, or manufactures a controlled substance or a counterfeit controlled substance in violation of the North Carolina Controlled Substance Act, Article 5 of Chapter 90.

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

2           (5) Manufacture. Defined in G.S. 90-87.

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

4           (7) Person. An individual or an entity that identifies itself as an entity and  
5           exists for a purpose, including a corporation, firm, partnership,  
6           institution, or other unit.

7           (8) Secretary. The Secretary of the Department of Revenue.

8 **"§ 105-113.92. Excise tax on controlled substances.**

9           An excise tax is levied on controlled substances and counterfeit controlled  
10 substances possessed by dealers at the following rates:

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

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

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

19 **"§ 105-113.93. Reports; revenue stamps.**

20           The Secretary shall issue stamps to affix to controlled substances and counterfeit  
21 controlled substances to indicate payment of the tax required by this Article. Dealers  
22 shall report the taxes payable under this Article at the time and on the form prescribed  
23 by the Secretary. Dealers are not required to give their name, address, social security  
24 number, or other identifying information on the form. Upon payment of the tax, the  
25 Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes  
26 may be paid and stamps may be issued either by mail or in person.

27 **"§ 105-113.94. When tax payable.**

28           The tax imposed by this Article is payable by any dealer who possesses a controlled  
29 substance or counterfeit controlled substance in this State upon which the tax has not  
30 been paid, as evidenced by a stamp. Taxes are payable within 48 hours after the dealer  
31 acquires a non-tax-paid controlled substance or counterfeit controlled substance. Upon  
32 payment of the tax, the dealer shall permanently affix the appropriate stamps to the  
33 controlled substance. Once the tax due on a controlled substance or counterfeit  
34 controlled substance has been paid, no additional tax is due under this Article even  
35 though the controlled substance or counterfeit controlled substance may be handled by  
36 other dealers.

37 **"§ 105-113.95. Violations of Article a felony.**

38           A dealer who violates this Article is guilty of a Class I felony, and is subject to an  
39 additional penalty of one hundred percent (100%) of any tax due from the dealer.  
40 Notwithstanding any other provision of law, no prosecution for a violation of this  
41 Article shall be barred before the expiration of six years after the date of the violation.

42 **"§ 105-113.96. Assessments.**

43           Notwithstanding any other provision of law, an assessment against a dealer who  
44 possesses a controlled substance to which a stamp has not been affixed as required by

1 this Article shall be made as provided in this section. The Secretary shall assess a tax,  
2 applicable penalties, and interest based on personal knowledge or information available  
3 to the Secretary. The Secretary shall notify the dealer in writing of the amount of the  
4 tax, penalty, and interest due, and demand its immediate payment. The notice and  
5 demand shall be either mailed to the dealer at the dealer's last known address or served  
6 on the dealer in person. If the dealer does not pay the tax, penalty, and interest  
7 immediately upon receipt of the notice and demand, the Secretary shall collect the tax,  
8 penalty, and interest pursuant to the procedure set forth in G.S. 105-241.2(e) for  
9 jeopardy assessments or the procedure set forth in G.S. 105-242, including causing  
10 execution to be issued immediately against the personal property of the dealer unless the  
11 dealer files with the Secretary a bond in the amount of the asserted liability for the tax,  
12 penalty, and interest. The Secretary shall use all means available to collect the tax,  
13 penalty, and interest from any property in which the dealer has a legal, equitable, or  
14 beneficial interest. The dealer may seek review of the assessment as provided in Article  
15 9 of this Chapter.

16 **"§ 105-113.97. Confidentiality of information.**

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

25 Sec. 2. Because at this time it is impossible to estimate the amount of  
26 additional revenue that may be generated by this act, sound budgetary practices dictate  
27 that the taxes collected pursuant to this act should not be expended before the 1990-91  
28 fiscal year. Therefore, notwithstanding any other provision of law, the Secretary of  
29 Revenue shall deposit the taxes collected pursuant to this act in a special fund to the  
30 credit of the State Treasurer, to be called the State Controlled Substances Tax Fund. It  
31 is the intent of the General Assembly that these tax proceeds shall remain in the Special  
32 Fund until the General Assembly provides that they shall be deposited in the General  
33 Fund.

34 Sec. 3. This act shall become effective October 1, 1989.