

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

3

SENATE BILL 987
Second Edition Engrossed 5/11/95
House Committee Substitute Favorable 5/31/95

Short Title: Criminal Enterprises.

(Public)

Sponsors:

Referred to:

May 4, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE FELONY OFFENSE OF CONTINUING CRIMINAL
3 ENTERPRISE WITH REGARD TO CRIMINAL OFFENSES THAT ARE NOT
4 DRUG OFFENSES, TO PROVIDE THAT FAILURE OF AN ITINERANT
5 MERCHANT TO KEEP A RECEIPT OR INVOICE WITH CERTAIN
6 INFORMATION INDICATING THE SOURCE OF THE MERCHANT'S
7 PRODUCTS AND TO SHOW THE RECEIPT OR INVOICE TO A LAW
8 ENFORCEMENT OFFICER UPON REQUEST IS PRIMA FACIE EVIDENCE
9 THAT THE PRODUCTS ARE STOLEN AND TO MAKE OTHER CHANGES.

10 The General Assembly of North Carolina enacts:

11 Section 1. Chapter 14 of the General Statutes is amended by adding a new
12 Article to read:

13 **"ARTICLE 2C.**

14 **"CONTINUING CRIMINAL ENTERPRISE.**

15 **"§ 14-7.20. Continuing criminal enterprise.**

16 (a) Any person who engages in a continuing criminal enterprise shall be punished
17 as a Class H felon and in addition shall be subject to the forfeiture prescribed in
18 subsection (b) of this section.

1 **(b)** Any person who is convicted under subsection (a) of this section of engaging
2 in a continuing criminal enterprise shall forfeit to the State of North Carolina:

3 **(1)** The profits obtained by the person in the enterprise, and

4 **(2)** Any of the person's interest in, claim against, or property or contractual
5 rights of any kind affording a source of influence over, such enterprise.

6 **(c)** For purposes of this section, a person is engaged in a continuing criminal
7 enterprise if:

8 **(1)** The person violates any provision of this Chapter, the punishment of
9 which is a felony; and

10 **(2)** The violation is a part of a continuing series of violations of this
11 Chapter:

12 a. Which are undertaken by the person in concert with five or more
13 other persons with respect to whom the person occupies a
14 position of organizer, a supervisory position, or any other
15 position of management; and

16 b. From which the person obtains substantial income or resources."

17 Sec. 2. G.S. 105-53(i1) reads as rewritten:

18 "(i1) Records of Source of New Merchandise. – Each peddler, itinerant merchant,
19 and specialty market vendor shall keep a written record of the source of new merchandise
20 the merchant offers for sale. The record ~~may~~ must be a receipt or an invoice from the
21 person who sold the merchandise to the ~~merchant or any other documentation that establishes~~
22 ~~the source of the merchandise.~~ merchant. The invoice or receipt must specifically identify
23 the product being sold by product name and quantity purchased and must contain the
24 complete business name, business description, and retail sales and use tax registration
25 number, if any, of the seller. If the seller was an individual, the receipt or invoice must
26 contain the seller's drivers license number, its state of issuance and expiration date, and
27 the seller's date of birth. The merchant must verify this information by comparing the
28 seller's drivers license to the invoice or receipt and signing the invoice or receipt. A
29 specialty identification card issued by the Division of Motor Vehicles may be used in
30 place of the seller's drivers license for the purposes of providing and verifying
31 information required under this subsection. If the seller was a corporation, the receipt or
32 invoice must contain the corporation's federal tax identification number, the state of
33 incorporation, the name and address of the corporation's registered agent in this State, if
34 any, and the corporation's principal office address.

35 The merchant shall keep the record with the new merchandise being offered for sale
36 and shall maintain the record for a period of three years after the merchandise is sold.
37 Upon the request of a law enforcement agent, the merchant shall produce the record of
38 the source of new merchandise the merchant offers for sale. If the merchant fails to
39 produce the requested record and the law enforcement agent has probable cause to
40 believe the merchant's possession of the merchandise is unlawful, the agent may take the
41 merchandise into custody as evidence. Merchandise impounded under this subsection
42 must be disposed of in accordance with G.S. 15-11.1."

43 Sec. 3. G.S. 105-53 is amended by adding a new subsection to read:

1 "(i2) Notice of Records Requirement. – A specialty market operator shall
2 conspicuously post in plain view of all specialty market vendors a sign informing all
3 vendors that, effective July 1, 1996, failure to produce, upon the request of a law
4 enforcement agent, the records required under subsection (i1) of this section is prima
5 facie evidence of possession of stolen property."

6 Sec. 4. G.S. 105-53(l) reads as rewritten:

7 "(l) Misdemeanor Violations. – It shall be a Class 3 misdemeanor for a person to
8 do any of the following:

9 (1) Fail to obtain a license as required by this section.

10 (2) Knowingly give false information in the application process for a
11 license or when registering pursuant to subsection (k).

12 (3) If the person is an itinerant merchant, fail to display the license as
13 required by subsection (i); if the person is a peddler or specialty market
14 operator, fail to produce the license as required by subsection (i); or, if
15 the person is required to do so, fail to comply with subsection (j).
16 Whenever satisfactory evidence shall be presented in any court of the
17 fact that a license was required by this section and such license was not
18 displayed or produced as required by subsection (i), or that permission
19 was required by subsection (j) of this section and was not displayed, the
20 peddler, itinerant merchant, or specialty market operator shall be found
21 not guilty of that violation provided he produces in court a valid license
22 or valid permission which had been issued prior to the time he was
23 charged with such violation.

24 (4) Fail to provide name, address, or identification upon request as required
25 by subsection (i) or provide false information in response to such a
26 request.

27 (5) ~~Fail to keep a record of the source of new merchandise offered for sale~~
28 ~~as required by subsection (i1).~~

29 It shall be a Class 1 misdemeanor to fail to keep a record of new merchandise offered
30 for sale as required by subsection (i1)."

31 Sec. 5. Effective July 1, 1996, G.S. 105-53(i1), as rewritten by Section 2 of
32 this act, reads as rewritten:

33 "(i1) Records of Source of New Merchandise. – Each peddler, itinerant merchant,
34 and specialty market vendor shall keep a written record of the source of new merchandise
35 the merchant offers for sale. The record must be a receipt or an invoice from the person
36 who sold the merchandise to the merchant. The invoice or receipt must specifically
37 identify the product being sold by product name and quantity purchased and must contain
38 the complete business name, business description, and retail sales and use tax registration
39 number, if any, of the seller. If the seller was an individual, the receipt or invoice must
40 contain the seller's drivers license number, its state of issuance and expiration date, and
41 the seller's date of birth. The merchant must verify this information by comparing the
42 seller's drivers license to the invoice or receipt and signing the invoice or receipt. A
43 specialty identification card issued by the Division of Motor Vehicles may be used in

1 place of the seller's drivers license for the purposes of providing and verifying
2 information required under this subsection. If the seller was a corporation, the receipt or
3 invoice must contain the corporation's federal tax identification number, the state of
4 incorporation, the name and address of the corporation's registered agent in this State, if
5 any, and the corporation's principal office address.

6 The merchant shall keep the record with the new merchandise being offered for sale
7 and shall maintain the record for a period of three years after the merchandise is sold.
8 Upon the request of a law enforcement agent, the merchant shall produce the record of
9 the source of new merchandise the merchant offers for sale. ~~If the merchant fails~~ A
10 merchant's failure to produce the requested record within a reasonable time of request by
11 a law enforcement agent and the law enforcement agent has probable cause to believe the
12 merchant's possession of the merchandise is unlawful, the agent may take the merchandise into
13 custody as evidence. ~~is prima facie evidence of possession of stolen property.~~ Pending the
14 production of the requested record, the agent may take the merchandise into custody as
15 evidence at the time the request is made. Merchandise impounded under this subsection
16 must be disposed of in accordance with G.S. 15-11.1."

17 Sec. 6. Except as otherwise provided, this act becomes effective December 1,
18 1995, and applies to offenses committed on or after that date. Section 2 of this act also
19 applies only to merchandise acquired on or after that date. Section 5 of this act becomes
20 effective July 1, 1996, and applies to offenses committed on or after that date.