

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

3

HOUSE BILL 1354*
Committee Substitute Favorable 5/2/07
Senate Judiciary I (Civil) Committee Substitute Adopted 6/20/07

Short Title: Motor Vehicle Chop Shop Act.

(Public)

Sponsors:

Referred to:

April 10, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A MOTOR VEHICLE CHOP SHOP LAW REGARDING THE
3 RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED
4 MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 16 of Chapter 14 of the General Statutes is amended by
7 adding a new section to read:

8 "**§ 14-72.7. Chop shop activity.**

9 (a) A person is guilty of a Class H felony if that person knowingly engages in
10 any of the following activities, without regard to the value of the property in question:

11 (1) Altering, destroying, disassembling, dismantling, reassembling, or
12 storing any motor vehicle or motor vehicle part the person knows to be
13 illegally obtained by theft, fraud, or other illegal means.

14 (2) Permitting a place to be used for any activity prohibited by this
15 section, where the person either owns or has legal possession of the
16 place, and knows that the place is being used for any activity
17 prohibited by this section.

18 (3) Purchasing, disposing of, selling, transferring, receiving, or possessing
19 a motor vehicle or motor vehicle part with the knowledge that the
20 vehicle identification number of the motor vehicle, or vehicle part
21 identification number of the vehicle part, has been altered,
22 counterfeited, defaced, destroyed, disguised, falsified, forged,
23 obliterated, or removed.

24 (4) Purchasing, disposing of, selling, transferring, receiving, or possessing
25 a motor vehicle or motor vehicle part to or from a person engaged in
26 any activity prohibited by this section, knowing that the person is
27 engaging in that activity.

1 (b) Innocent Activities. – The provisions of this section shall not apply to either
2 of the following:

3 (1) Purchasing, disposing of, selling, transferring, receiving, possessing,
4 crushing, or compacting a motor vehicle or motor vehicle part in good
5 faith and without knowledge of previous illegal activity in regard to
6 that vehicle or part, as long as the person engaging in the activity does
7 not remove a vehicle identification number or vehicle part
8 identification number before or during the activity.

9 (2) Purchasing, disposing of, selling, transferring, receiving, possessing,
10 crushing, or compacting a motor vehicle or motor vehicle part after
11 law enforcement proceedings are completed or as a part of law
12 enforcement proceedings, as long as the activity is not in conflict with
13 law enforcement proceedings.

14 (c) Civil Penalty. – Any court with jurisdiction of a criminal prosecution under
15 this section may also assess a civil penalty. The clear proceeds of the civil penalties
16 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
17 G.S. 115C-457.2. The civil penalty shall not exceed three times the assets obtained by
18 the defendant as a result of violations of this section.

19 (d) Private Actions. – Any person aggrieved by a violation of this section may,
20 in a civil action in any court of competent jurisdiction, obtain appropriate relief,
21 including preliminary and other equitable or declaratory relief, compensatory and
22 punitive damages, reasonable investigation expenses, costs of suit, and any attorneys'
23 fees as may be provided by law.

24 (e) Seizure and Forfeiture. – Any instrumentality possessed or used to engage in
25 the activities prohibited by this section are subject to the seizure and forfeiture
26 provisions of G.S. 14-86.1. The real property of a place used to engage in the activities
27 prohibited by this section is subject to the abatement and forfeiture provisions of
28 Chapter 19 of the General Statutes.

29 (f) Definitions. – For the purposes of this section, the following definitions
30 apply:

31 (1) Instrumentality. – Motor vehicle, motor vehicle part, other
32 conveyance, tool, implement, or equipment possessed or used in the
33 activities prohibited under this section.

34 (2) Vehicle identification number. – A number, a letter, a character, a
35 datum, a derivative, or a combination thereof, used by the
36 manufacturer or the Division of Motor Vehicles for the purpose of
37 uniquely identifying a motor vehicle.

38 (3) Vehicle part identification number. – A number, a letter, a character, a
39 datum, a derivative, or a combination thereof, used by the
40 manufacturer for the purpose of uniquely identifying a motor vehicle
41 part."

42 **SECTION 2.** G.S. 14-86.1(a) reads as rewritten:

43 "(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully
44 conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or

1 used by any person in the commission of armed or common-law robbery, or used in
2 violation of G.S. 14-72.7, or used by any person in the commission of any larceny when
3 the value of the property taken is more than two thousand dollars (\$2,000) shall be
4 subject to forfeiture as provided herein, except that:

- 5 (1) No conveyance used by any person as a common carrier in the
6 transaction of the business of the common carrier shall be forfeited
7 under the provisions of this section unless it shall appear that the
8 owner or other person in custody or control of such conveyance was a
9 consenting party or privy to a violation that may subject the
10 conveyance to forfeiture under this section;
- 11 (2) No conveyance shall be forfeited under the provisions of this section
12 by reason of any act or omission committed or omitted while such
13 conveyance was unlawfully in the possession of a person other than
14 the owner in violation of the criminal laws of the United States, or any
15 state;
- 16 (3) No conveyance shall be forfeited pursuant to this section unless the
17 violation involved is a felony;
- 18 (4) A forfeiture of a conveyance encumbered by a bona fide security
19 interest is subject to the interest of the secured party who neither had
20 knowledge of nor consented to the act or omission;
- 21 (5) No conveyance shall be forfeited under the provisions of this section
22 unless the owner knew or had reason to believe the vehicle was being
23 used in the commission of any violation that may subject the
24 conveyance to forfeiture under this section;
- 25 (6) The trial judge in the criminal proceeding which may subject the
26 conveyance to forfeiture may order the seized conveyance returned to
27 the owner if he finds forfeiture inappropriate. If the conveyance is not
28 returned to the owner the procedures provided in subsection (e) shall
29 apply.

30 As used in this section concerning a violation of G.S. 14-72.7, the term
31 "conveyance" includes any "instrumentality" as defined in that section."

32 **SECTION 3.** G.S. 19-1 reads as rewritten:

33 **"§ 19-1. What are nuisances under this Chapter.**

34 (a) The erection, establishment, continuance, maintenance, use, ownership or
35 leasing of any building or place for the purpose of assignation, prostitution, gambling,
36 illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled
37 substances as defined in the North Carolina Controlled Substances Act, or illegal
38 possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute
39 a nuisance.

40 (b) The erection, establishment, continuance, maintenance, use, ownership or
41 leasing of any building or place wherein or whereon are carried on, conducted, or
42 permitted repeated acts which create and constitute a breach of the peace shall constitute
43 a nuisance.

1 (b1) The erection, establishment, continuance, maintenance, use, ownership or
2 leasing of any building or place wherein or whereon are carried on, conducted, or
3 permitted repeated activities or conditions which violate a local ordinance regulating
4 sexually oriented businesses so as to contribute to adverse secondary impacts shall
5 constitute a nuisance.

6 (b2) The erection, establishment, continuance, maintenance, use, ownership, or
7 leasing of any building or place for the purpose of carrying on, conducting, or engaging
8 in any activities in violation of G.S. 14-72.7.

9 (c) The building, place, vehicle, or the ground itself, in or upon which a nuisance
10 as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture,
11 fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as
12 hereinafter provided."

13 **SECTION 4.** G.S. 19-6.1 reads as rewritten:

14 **"§ 19-6.1. Forfeiture of real property.**

15 In all actions where a preliminary injunction, permanent injunction, or an order of
16 abatement is issued pursuant to this Article in which the nuisance consists of or includes
17 at least two prior occurrences within five years of the manufacture, possession with
18 intent to sell, or sale of controlled substances as defined by the North Carolina
19 Controlled Substances Act, ~~or two prior occurrences of the possession of any controlled~~
20 ~~substance included within Schedule I or II of that Act, or two prior convictions within~~
21 five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or
22 is maintained is subject to forfeiture in accordance with this section. In the case of the
23 two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same
24 transaction or occurrence.

25 If all of the owners of the property are defendants in the action, the plaintiff, other
26 than a plaintiff who is a private citizen, may request forfeiture of the real property as
27 part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant
28 owners is established, upon judgment against the defendant or defendants, the court
29 shall order forfeiture as follows:

30 (1) If the court finds by clear and convincing evidence that all the owners
31 either (i) have participated in maintaining the nuisance on the property,
32 or (ii) prior to the action had written notice from the plaintiff, or any
33 governmental agent or entity authorized to bring an action pursuant to
34 this Chapter, that the nuisance existed or was maintained on the
35 property and have not made good faith efforts to stop the nuisance
36 from occurring or recurring, the court shall order that the property be
37 forfeited;

38 (2) If the court finds that one or more of the owners did not participate in
39 maintaining the nuisance on the property or did not have written notice
40 from the plaintiff prior to the action that the nuisance existed or was
41 maintained on the property, the court shall not order forfeiture of the
42 property immediately upon judgment. However, if after judgment and
43 an order directing the defendants to abate the nuisance, the nuisance
44 either continues, begins again, or otherwise recurs within five years of

1 the order and the defendants have not made good faith efforts to abate
2 the nuisance, the plaintiff may petition the court for forfeiture. Upon
3 such petition, the defendant owner or owners shall be given notice and
4 an opportunity to appear and be heard at a hearing to determine the
5 continuation or recurrence of the nuisance. If, in this hearing (i) the
6 plaintiff establishes by clear and convincing evidence that the
7 nuisance, with the owner's or owners' knowledge, has either continued,
8 begun again, or otherwise recurred, and (ii) the defendants fail to
9 establish that they have made and are continuing to make good faith
10 efforts to abate the nuisance, the court shall order that the property be
11 forfeited.

12 For the purposes of this section, factors which may evidence good faith by the
13 defendant to abate the nuisance include but are not limited to (i) cooperation with law
14 enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the
15 illegal possession or sale of narcotic drugs and an action to evict a tenant for any
16 violations of the lease provision; (iii) a criminal record check of prospective tenants;
17 and (iv) reference checks of prior residency of prospective tenants.

18 Upon an order of forfeiture, title to the property shall vest in the school board of the
19 county in which the property is located. If at the time of forfeiture the property is
20 subject to a lien or security interest of a person not participating in the maintenance of
21 the nuisance, the school board shall either (i) pay an amount to that person satisfying the
22 lien or security interest; or (ii) sell the property and satisfy the lien or security interest
23 from the proceeds of the sale. If the property is not subject to any lien or security
24 interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or
25 otherwise dispose of the property as it sees fit.

26 Upon the filing of the action, the plaintiff may file a notice of lis pendens in the
27 official records of the county where the property is located. If the plaintiff files a notice
28 of lis pendens, any person purchasing or obtaining an interest in the property thereafter
29 shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in
30 the property upon a judgment of forfeiture in favor of the plaintiff.

31 If in the same action in which real property is forfeited the court finds that a tenant
32 or occupant of the property participated in or maintained the nuisance, the lease or other
33 title under which the tenant or occupant holds is void, and the right of possession vests
34 in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate
35 units of the property who were not involved in the nuisance at the time the action was
36 filed shall be in accordance with any relevant lease provisions in effect at the time or, in
37 the absence of relevant lease provisions, in accordance with the law applying to other
38 tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by
39 new owners."

40 **SECTION 5.** If any provision of this act or its application is held invalid, the
41 invalidity does not affect other provisions or applications of this act that can be given
42 effect without the invalid provisions or application, and to this end the provisions of this
43 act are severable.

1 **SECTION 6.** This act becomes effective December 1, 2007, and applies to
2 offenses committed on or after that date.