

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35317-RK-15 (01/16)

Short Title: Tax on Drug Distributions. (Public)

Sponsors: Senator Boseman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO TAX THE UNLAWFUL DISTRIBUTION OF CONTROLLED
SUBSTANCES AND TO CREATE THE BLAIRE THOMPSON FUND.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Blaire
Thompson Act."

SECTION 2. G.S. 15B-2 reads as rewritten:

"...

(4a) "Controlled substance" has the same definition as set forth in
G.S. 90-87.

...

(5) "Criminally injurious conduct" is defined as:

a. ~~means conduct~~ Conduct that by its nature poses a substantial
threat of personal injury or death, and is punishable by fine or
imprisonment or death, or would be so punishable but for the
fact that the person engaging in the conduct lacked the capacity
to commit the crime under the laws of this State. ~~Criminally
injurious conduct includes conduct~~

b. Conduct that amounts to an offense involving impaired driving
as defined in G.S. 20-4.01(24a), and conduct that amounts to a
violation of G.S. 20-166 if the victim was a pedestrian or was
operating a vehicle moved solely by human power or a mobility
impairment device. For purposes of this Article, a mobility
impairment device is a device that is designed for and intended
to be used as a means of transportation for a person with a
mobility impairment, is suitable for use both inside and outside
a building, and whose maximum speed does not exceed 12

1 miles per hour when the device is being operated by a person
 2 with a mobility impairment. Criminally injurious conduct does
 3 not include conduct arising out of the ownership, maintenance,
 4 or use of a motor vehicle when the conduct is punishable only
 5 as a violation of other provisions of Chapter 20 of the General
 6 Statutes.

7 c. The illegal distribution or transfer of controlled substances.

8 d. Conduct that constitutes ~~Criminally injurious conduct~~ shall also
 9 ~~include~~ an act of terrorism, as defined in 18 U.S.C. § 2331, that
 10 is committed outside of the United States against a citizen of
 11 this State.

12 ...

13 (12b) "Transfer" has the same definition as set forth in G.S. 105-113.106.

14"

15 **SECTION 3.** G.S. 15B-6(a) reads as rewritten:

16 **"§ 15B-6. Powers of the Commission and Director.**

17 (a) In addition to powers authorized by this Article and Chapter 150B, the
 18 Commission may:

- 19 (1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and
 20 Article 2A of Chapter 150B of the General Statutes necessary to carry
 21 out the purposes of this Article;
- 22 (2) Establish general policies and guidelines for awarding compensation
 23 and provide guidance to the staff assigned by the Secretary of the
 24 Department of Crime Control and Public Safety to administer the
 25 program;
- 26 (3) Accept for any lawful purpose and functions under this Article any and
 27 all donations, both real and personal, and grants of money from any
 28 governmental unit or public agency, or from any institution, person,
 29 firm, or corporation, and may deposit the same to the Crime Victims
 30 Compensation ~~Fund~~ Fund or the Blaire Thompson Fund."

31 **SECTION 4.** G.S. 15B-7(a) reads as rewritten:

32 **"§ 15B-7. Filing of application for compensation award; contents.**

33 (a) A claim for an award of compensation from the Crime Victims Compensation
 34 Fund or the Blaire Thompson Fund is commenced by filing an application for an award
 35 with the Director. The application shall be in a form prescribed by the Commission and
 36 shall contain the following information:

37"

38 **SECTION 5.** G.S. 15B-8 is amended by adding a new subsection to read:

39 **"§ 15B-8. Procedure for filing application.**

40 (a) The Director shall establish procedures for screening, filing, recording,
 41 investigating, and processing applications for an award of compensation. The Director
 42 shall also establish the procedures and methods for processing follow-up claims for
 43 compensation. The procedures and methods established by the Director under this
 44 subsection shall conform to any rules adopted by the Commission.

1 (b) Repealed by Session Laws 1987, c. 819, s. 14.

2 (c) The Director shall establish the procedures described in subsection (a) of this
3 section for applications for compensation from the Blaire Thompson Fund.

4 (1) Only persons who have suffered damages proximately caused by the
5 illegal use of a controlled substance are qualified as claimants who are
6 eligible to apply for, and to receive, an award of compensation from
7 the Blaire Thompson Fund.

8 (2) Notwithstanding any other provision of this Article, claimants
9 applying for compensation from the Blaire Thompson Fund shall not
10 have an award withheld or reduced based upon either the criminal
11 misconduct or contributory negligence of the claimant or the victim of
12 the criminally injurious conduct."

13 **SECTION 6.** G.S. 15B-18 reads as rewritten:

14 **"§ 15B-18. Subrogation by State.**

15 (a) If compensation is awarded, the Crime Victims Compensation Fund or the
16 Blaire Thompson Fund is subrogated to all the claimant's rights to receive or recover
17 benefits or advantages for economic loss from a source that is, or if readily available to
18 the victim or claimant would be, a collateral source, to the extent of the compensation
19 awarded.

20 (b) The Crime Victims Compensation Fund and the Blaire Thompson Fund are
21 an eligible recipient-eligible recipients for restitution under G.S. 15A-1021, 15A-1343,
22 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

23 (c) As a prerequisite to bringing an action to recover damages related to
24 criminally injurious conduct for which compensation is claimed or awarded, the
25 claimant shall give the Commission prior written notice of the proposed action. After
26 receiving the notice the Commission shall immediately notify the Attorney General who
27 shall promptly:

- 28 (1) Join in the action as a party plaintiff to recover compensation awarded;
29 (2) Require that the claimant bring the action in his individual name as a
30 trustee in behalf of the State to recover compensation awarded; or
31 (3) Reserve its rights and do neither in the proposed action. If, as
32 requested by the Attorney General, the claimant brings the action as
33 trustee and recovers compensation awarded from the Crime Victims
34 Compensation Fund, he may deduct from the compensation recovered
35 in behalf of the State the reasonable expenses, including attorney fees,
36 allocable by the court for that recovery.

37 (d) If a judgment or verdict separately indicates economic loss and noneconomic
38 detriment, payments on the judgment shall be allocated between them in proportion to
39 the amounts indicated. In an action in a court of this State arising out of criminally
40 injurious conduct, the judge, on timely motion, shall direct the jury to return a special
41 verdict, indicating separately the awards for noneconomic detriment, punitive damages,
42 and economic loss.

43 (e) Any funds recovered by the Crime Victims Compensation Fund or the Blaire
44 Thompson Fund pursuant to this section shall be paid to the general fund.

1 (f) The Director may pursue any claim of the Crime Victim's Compensation
2 ~~Fund-Fund~~, the Blaire Thompson Fund, or the Commission set forth in this Article. At
3 the request of the Director, or otherwise, the Attorney General is authorized to assert the
4 rights of the Crime Victim's Compensation ~~Fund-Fund~~, the Blaire Thompson Fund, or
5 Commission before any administrative or judicial tribunal for purposes of enforcing a
6 claim or right set forth in this Article."

7 **SECTION 7.** G.S. 15B-21 reads as rewritten:

8 "**§ 15B-21. Annual report.**

9 The Commission shall, by March 15 each year, prepare and transmit to the Governor
10 and the General Assembly a report of its activities in the prior fiscal year and the current
11 fiscal year to date. The report shall include:

- 12 (1) The number of claims filed;
- 13 (2) The number of awards made;
- 14 (2a) The number of pending cases by year received;
- 15 (3) The amount of each award;
- 16 (4) A statistical summary of claims denied and awards made;
- 17 (5) The administrative costs of the Commission, including the
18 compensation of commissioners;
- 19 (6) The current unencumbered balance of the North Carolina Crime
20 Victims Compensation Fund;
- 21 (6a) The current unencumbered balance of the Blaire Thompson Fund;
- 22 (7) The amount of funds carried over from the prior fiscal year;
- 23 (8) The amount of funds received in the prior fiscal year from the
24 Department of Correction and from the compensation fund established
25 pursuant to the Victims Crime Act of 1984, 42 U.S.C. § 10601, et seq.;
- 26 and
- 27 (9) The amount of funds expected to be received in the current fiscal year,
28 as well as the amount actually received in the current fiscal year on the
29 date of the report, from the Department of Correction and from the
30 compensation fund established pursuant to the Victims Crime Act of
31 1984, 42 U.S.C. § 10601, et seq.

32 The Attorney General and State Auditor shall assist the Commission in the
33 preparation of the report required by this section."

34 **SECTION 8.** Chapter 15B of the General Statutes is amended by adding a
35 new section to read:

36 "**§ 15B-23.1. The Blaire Thompson Fund.**

37 There is established the Blaire Thompson Fund. Revenue in the Blair Thompson
38 Fund includes amounts credited to the Fund under G.S. 105-113.113 and other funds.
39 Any surplus in the Blaire Thompson Fund shall not revert. The Blaire Thompson Fund
40 shall be kept on deposit with the State Treasurer, as in the case of other State funds, and
41 may be invested by the State Treasurer in any lawful security for the investment of State
42 money. The Blaire Thompson Fund is subject to the oversight of the State Auditor
43 pursuant to Article 5A of Chapter 147 of the General Statutes."

44 **SECTION 9.** G.S. 105-113.105 reads as rewritten:

1 "The purpose of this Article is to levy an excise tax to generate revenue for State and
2 local law enforcement ~~agencies~~agencies, crime victims, and for the General Fund.
3 Nothing in this Article may in any manner provide immunity from criminal prosecution
4 for a person who possesses or distributes an illegal substance."

5 **SECTION 10.** G.S. 105-113.106 reads as rewritten:

6 **"§ 105-113.106. Definitions.**

7 The following definitions apply in this Article:

8 ...

9 (8b) Transfer. – The actual or constructive change of possession from one
10 person to another of a substance regulated by this Chapter.

11"

12 **SECTION 11.** G.S. 105-113.107A reads as rewritten:

13 **"§ 105-113.107A. Exemptions.**

14 (a) Authorized Possession. – The tax levied in this Article does not apply to a
15 substance in the possession of a dealer who is authorized by law to possess the
16 substance. This exemption applies only during the time the dealer's possession of the
17 substance is authorized by law.

18 (a1) Authorized Transfer. – The tax levied in this Article does not apply to a
19 transfer of a substance by a dealer who is legally authorized to transfer the substance.
20 This exemption applies only during the time the dealer's transfer of the substance is
21 authorized by law.

22 (b) Certain Marijuana Parts. – The tax levied in this Article does not apply to the
23 following marijuana:

- 24 (1) Harvested mature marijuana stalks when separated from and not mixed
25 with any other parts of the marijuana plant.
- 26 (2) Fiber or any other product of marijuana stalks described in subdivision
27 (1) of this subsection, except resin extracted from the stalks.
- 28 (3) Marijuana seeds that have been sterilized and are incapable of
29 germination.
- 30 (4) Roots of the marijuana plant."

31 **SECTION 12.** Article 2D of Chapter 105 of the General Statutes is amended
32 by adding a new section to read:

33 **"§ 105-113.107B. Transfer tax on unauthorized substances.**

34 A tax is levied on the actual or constructive transfer of controlled substances by
35 dealers at the same rates set forth in G.S. 105-113.107, Excise tax on unauthorized
36 substances. The provisions on weight set forth in G.S. 105-113.107(a1) are applicable to
37 controlled substances subject to the transfer tax under this section."

38 **SECTION 13.** G.S. 105-113.108 reads as rewritten:

39 **"§ 105-113.108. Reports; revenue stamps.**

40 (a) Revenue Stamps. – The Secretary shall issue stamps to affix to unauthorized
41 substances to indicate payment of the ~~tax~~taxes required by this Article. Dealers shall
42 report the taxes payable under this Article at the time and on the return prescribed by the
43 Secretary. Notwithstanding any other provision of law, dealers are not required to give
44 their name, address, social security number, or other identifying information on the

1 return, and the return is not required to be verified by oath or affirmation. Upon
2 payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of
3 the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

4 (b) Reports. – Every local law enforcement agency and every State law
5 enforcement agency must report to the Department within 48 hours after seizing an
6 unauthorized substance, making an arrest of an individual for transferring an
7 unauthorized substance, or making an arrest of an individual in possession of an
8 unauthorized substance, listed in this subsection upon which a stamp has not been
9 affixed. The report must be in the form prescribed by the Secretary and it must include
10 the time and place of the arrest or seizure, the amount, location, and kind of substance,
11 the identification of an individual in possession of the substance and that individual's
12 social security number, and any other information prescribed by the Secretary. The
13 report must be made when the arrest or seizure involves any of the following
14 unauthorized substances upon which ~~a~~ an excise or transfer stamp has not been affixed
15 as required by this Article:

- 16 (1) More than 42.5 grams of marijuana.
- 17 (2) Seven or more grams of any other controlled substance that is sold by
18 weight.
- 19 (3) Ten or more dosage units of any other controlled substance that is not
20 sold by weight.
- 21 (4) Any illicit mixed beverage.
- 22 (5) Any illicit spirituous liquor.
- 23 (6) Mash."

24 **SECTION 14.** G.S. 105-113.109 reads as rewritten:

25 "**§ 105-113.109. When tax payable.**

26 (a) The excise tax imposed by this Article is payable by any dealer who actually
27 or constructively possesses an unauthorized substance in this State upon which the tax
28 has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the
29 dealer acquires actual or constructive possession of a non-tax-paid unauthorized
30 substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which
31 case the tax is payable on the next working day. Upon payment of the tax, the dealer
32 shall permanently affix the appropriate stamps to the unauthorized substance. Once the
33 excise tax due on an unauthorized substance has been paid, no additional excise tax is
34 due under this Article even though the unauthorized substance may be handled by other
35 dealers.

36 (b) The transfer tax imposed by this Article is payable by any dealer who actually
37 or constructively transfers an unauthorized substance in this State upon which the
38 transfer tax has not been paid, as evidenced by an unexpired transfer stamp. The tax is
39 payable prior to any transfer, and stamps issued upon payment of the tax shall expire
40 five days from the date of the issuance. Upon payment of the tax, the dealer shall
41 permanently affix the appropriate stamps to the unauthorized substance to be
42 transferred. All transfers of unauthorized substances, including unauthorized substances
43 which have been previously transferred with appropriate stamps, must have a valid and
44 unexpired transfer stamp affixed at the time of transfer."

1 **SECTION 15.** G.S. 105-113.111 reads as rewritten:

2 "**§ 105-113.111. Assessments.**

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

20 **SECTION 16.** G.S. 105-113.113 reads as rewritten:

21 "**§ 105-113.113. Use of tax proceeds.**

22 (a) ~~Special Account.~~Accounts. – The Secretary shall credit the proceeds of the
23 ~~tax~~taxes levied by this Article to two a~~special nonreverting account,~~accounts, to be
24 called the State Unauthorized Substances Tax Account for Excise Taxes, and the State
25 Unauthorized Substances Tax Account for Transfer Taxes, until the tax proceeds are
26 unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in
27 this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when
28 either of the following occurs:

- 29 (1) The tax has been fully paid and the taxpayer has no current right under
30 G.S. 105-267 to seek a refund.
- 31 (2) The taxpayer has been notified of the final assessment of the tax under
32 G.S. 105-241.1 and has neither fully paid nor timely contested the tax
33 under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

34 (b) Excise Tax Distribution. – The Secretary shall remit from the State
35 Unauthorized Substances Tax Account for Excise Taxes seventy-five percent (75%) of
36 the part of the unencumbered tax proceeds that was collected by assessment to the State
37 or local law enforcement agency that conducted the investigation of a dealer that led to
38 the assessment. If more than one State or local law enforcement agency conducted the
39 investigation, the Secretary shall determine the equitable share for each agency based on
40 the contribution each agency made to the investigation. The Secretary shall credit the
41 remaining unencumbered tax proceeds to the General Fund.

42 (b1) Transfer Tax Distribution. – The Secretary shall remit the unencumbered tax
43 proceeds in the State Unauthorized Substances Tax Account for Transfer Taxes to the
44 Blair Thompson Fund, as established by G.S. 15B-23.1.

1 (b2) If the Secretary has made notification under this Chapter that a person owes
2 taxes, penalties, and interest for both the excise and transfer tax, any monies collected
3 shall be credited towards the State Unauthorized Substances Tax Account for Excise
4 Taxes until the amount due based on failure to pay the excise tax is satisfied.

5 (c) Refunds. – The refund of a tax that has already been distributed shall be
6 drawn initially from the State Unauthorized Substances Tax ~~Account~~. Account for
7 Excise Taxes or Transfer Taxes, depending upon which account had been the source of
8 the distribution. The amount of refunded taxes that had been distributed to a law
9 enforcement agency under this section and any interest shall be subtracted from
10 succeeding distributions from the Account to that law enforcement agency. The amount
11 of refunded taxes that had been credited to the General Fund under this section and any
12 interest shall be subtracted from succeeding credits to the General Fund from the
13 Account."

14 **SECTION 17.** Sections 1 through 16 of this act become effective December
15 1, 2007, and apply to transfers of illegal controlled substances on or after that date. The
16 remainder of this act is effective when it becomes law.