

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS65221-MA-182A* (2/28)

Short Title: Motor Vehicle Chop Shop Act.

(Public)

Sponsors: Senator Graham.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE A UNIFORM MOTOR VEHICLE CHOP SHOP LAW
REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF
STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a
new Article to read:

"Article 18.

"Motor Vehicle Chop Shop, Stolen, And Altered Property Act.

"§ 20-400. Short title.

This act may be cited as the "Motor Vehicle Chop Shop Act."

"§ 20-401. Definitions.

Unless the context requires otherwise, the following definitions apply throughout
this Article to the defined words and phrases and their cognates:

(1) Chop shop. – Any building, lot, or other premises where one or more
persons are or have been knowingly engaged in altering, destroying,
disassembling, dismantling, reassembling, or knowingly storing any
motor vehicle or motor vehicle part known to be illegally obtained by
theft, fraud, or conspiracy to defraud, in order either to:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge,
obliterate, or remove the identity, including the vehicle
identification number of the motor vehicle or motor vehicle
part, in order to misrepresent the identity of the motor vehicle
or motor vehicle part or to prevent the identification of the
motor vehicle or motor vehicle part or

b. Sell or dispose of the motor vehicle or motor vehicle part.

1 (2) Unidentifiable. – The uniqueness of a motor vehicle or motor vehicle
2 part cannot be established by either expert law enforcement
3 investigative personnel specially trained and experienced in motor
4 vehicle theft investigative procedures and motor vehicle identification
5 examination techniques or by expert employees of not-for-profit motor
6 vehicle theft prevention agencies specially trained and experienced in
7 motor vehicle theft investigation procedures and motor vehicle
8 identification examination techniques.

9 (3) Vehicle identification number. – A number, a letter, a character, a
10 datum, a derivative, or a combination thereof, used by the
11 manufacturer or the Department of Motor Vehicles for the purpose of
12 uniquely identifying a motor vehicle or motor vehicle part.

13 **§ 20-402. Chop shop operation unlawful; restitution.**

14 (a) It shall be unlawful for any person to own, operate, or conduct a chop shop, to
15 transport a motor vehicle or motor vehicle part to or from a location knowing it to be a
16 chop shop, or sell, transfer, purchase, or receive a motor vehicle or motor vehicle part
17 either to or from a location knowing it to be a chop shop.

18 (b) It shall be unlawful for any person to knowingly alter, counterfeit, deface,
19 destroy, disguise, falsify, forge, obliterate, or knowingly remove a vehicle identification
20 number, or cause any of the above to be done, with the intent to misrepresent the
21 identity or prevent the identification of a motor vehicle or motor vehicle part.

22 (c) It shall be unlawful for any person to buy, dispose, sell, transfer, or possess a
23 motor vehicle or motor vehicle part with the knowledge that the vehicle identification
24 number of the motor vehicle or motor vehicle part has been altered, counterfeited,
25 defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

26 The provisions of this subsection shall not apply to a motor vehicle scrap processor
27 who, in the normal course of business and in good faith, processes a motor vehicle or
28 motor vehicle part by crushing, compacting, or other similar methods, provided that any
29 vehicle identification number is not removed from the motor vehicle or motor vehicle
30 part before or during the processing.

31 (d) In addition to any other punishment provided for by law, any person who
32 violates this section shall be ordered to make restitution to the lawful owner of any
33 stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the
34 extent that the owner has been compensated by the insurer, and to any other person for
35 any financial loss sustained as a result of a violation of this section.

36 Financial loss includes, but is not limited to, loss of earnings, out-of-pocket and
37 other expenses, repair and replacement costs, and claims payments. Lawful owner
38 includes an innocent bona fide purchaser for value of a stolen motor vehicle or stolen
39 motor vehicle part who does not know that the motor vehicle or motor vehicle part is
40 stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser
41 for value who has subrogated the claim.

42 The court shall determine the amount and method of restitution. In an extraordinary
43 case, the court may determine that the best interests of the victim and justice would not
44 be served by ordering restitution. In that case, the court shall make and enter specific

1 written findings on the record concerning the extraordinary circumstances presented
2 which militated against restitution.

3 "§ 20-403. Seizure of the motor vehicles, tools, implements, or other
4 instrumentalities of the crime.

5 (a) All motor vehicles, motor vehicle parts, other conveyances, tools,
6 implements, or other instrumentalities possessed or used by any person in violation of
7 G.S. 20-402 shall be subject to forfeiture as provided herein, except that:

8 (1) No motor vehicles, motor vehicle parts, other conveyances, tools,
9 implements, or other instrumentalities used by any person as a
10 common carrier in the transaction of the business of the common
11 carrier shall be forfeited under the provisions of this section unless it
12 shall appear that the owner or other person in custody or control of
13 such conveyance was a consenting party or privy to a violation that
14 may subject the conveyance to forfeiture under this section;

15 (2) No motor vehicles, motor vehicle parts, other conveyances, tools,
16 implements, or other instrumentalities shall be forfeited under the
17 provisions of this section by reason of any act or omission committed
18 or omitted while such conveyance was unlawfully in the possession of
19 a person other than the owner in violation of the criminal laws of the
20 United States, or any state;

21 (3) No motor vehicles, motor vehicle parts, other conveyances, tools,
22 implements, or other instrumentalities shall be forfeited pursuant to
23 this section unless the violation involved is a felony;

24 (4) A forfeiture of any motor vehicles, motor vehicle parts, other
25 conveyances, tools, implements, or other instrumentalities encumbered
26 by a bona fide security interest is subject to the interest of the secured
27 party who neither had knowledge of nor consented to the act or
28 omission;

29 (5) No motor vehicles, motor vehicle parts, other conveyances, tools,
30 implements, or other instrumentalities shall be forfeited under the
31 provisions of this section unless the owner knew or had reason to
32 believe the vehicle was being used in the commission of any violation
33 that may subject the motor vehicles, motor vehicle parts, other
34 conveyances, tools, implements, or other instrumentalities to forfeiture
35 under this section; and

36 (6) The trial judge in the criminal proceeding which may subject the motor
37 vehicles, motor vehicle parts, other conveyances, tools, implements, or
38 other instrumentalities to forfeiture may order the seized conveyance
39 returned to the owner if he finds forfeiture inappropriate. If the
40 conveyance is not returned to the owner, the procedures provided in
41 subsection (e) of this section shall apply.

42 (b) Any motor vehicles, motor vehicle parts, other conveyances, tools,
43 implements, or other instrumentalities subject to forfeiture under this section may be
44 seized by any law enforcement officer upon process issued by any district or superior

1 court having original jurisdiction over the offense except that seizure without such
2 process may be made when:

3 (1) The seizure is incident to an arrest or subject to a search under a search
4 warrant; or

5 (2) The property subject to seizure has been the subject of a prior
6 judgment in favor of the State in a criminal injunction or forfeiture
7 proceeding under this section.

8 (c) The motor vehicles, motor vehicle parts, other conveyances, tools,
9 implements, or other instrumentalities shall be deemed to be in custody of the law
10 enforcement agency seizing it. The law enforcement agency may remove the property to
11 a place designated by it or request that the North Carolina Department of Justice or
12 Department of Crime Control and Public Safety take custody of the property and
13 remove it to an appropriate location for disposition in accordance with law; provided,
14 the conveyance shall be returned to the owner upon execution by him of a good and
15 valid bond, with sufficient sureties, in a sum double the value of the property, which
16 said bond shall be approved by an officer of the agency seizing the motor vehicles,
17 motor vehicle parts, other conveyances, tools, implements, or other instrumentalities
18 and shall be conditioned upon the return of said property to the custody of said officer
19 on the day of trial to abide the judgment of the court.

20 (d) Whenever a motor vehicle, motor vehicle part, other conveyance, tool,
21 implement, or other instrumentality is forfeited under this section, the law enforcement
22 agency having custody of it may:

23 (1) Retain the motor vehicles, motor vehicle parts, other conveyances,
24 tools, implements, or other instrumentalities for official use; or

25 (2) Transfer the motor vehicles, motor vehicle parts, other conveyances,
26 tools, implements, or other instrumentalities which were forfeited
27 under the provisions of this section to the North Carolina Department
28 of Justice or to the North Carolina Department of Crime Control and
29 Public Safety when, in the discretion of the presiding judge and upon
30 application of the North Carolina Department of Justice or the North
31 Carolina Department of Crime Control and Public Safety, said motor
32 vehicles, motor vehicle parts, other conveyances, tools, implements, or
33 other instrumentalities may be of official use to the North Carolina
34 Department of Justice or the North Carolina Department of Crime
35 Control and Public Safety; or

36 (3) Upon determination by the director of any law enforcement agency
37 that a motor vehicle, motor vehicle part, other conveyance, tool,
38 implement, or other instrumentality transferred pursuant to the
39 provisions of this section is of no further use to said agency, such
40 motor vehicles, motor vehicle parts, other conveyances, tools,
41 implements, or other instrumentalities may be sold as surplus property
42 in the same manner as other motor vehicles, motor vehicle parts, other
43 conveyances, tools, implements, or other instrumentalities owned by
44 the law enforcement agency. The proceeds from such sale, after

1 deducting the cost thereof, shall be paid to the school fund of the
2 county in which said conveyance was seized. Any conveyance
3 transferred to any law enforcement agency under the provisions of this
4 section which has been modified or especially equipped from its
5 original manufactured condition so as to increase its speed shall be
6 used in the performance of official duties only. Such conveyance shall
7 not be resold, transferred, or disposed of other than as junk unless the
8 special equipment or modification has been removed and destroyed
9 and the vehicle restored to its original manufactured condition.

10 (e) All motor vehicles, motor vehicle parts, other conveyances, tools,
11 implements, or other instrumentalities subject to forfeiture under the provisions of this
12 section shall be forfeited pursuant to the procedures for forfeiture of conveyances used
13 to conceal, convey, or transport intoxicating beverages found in G.S. 18B-504.
14 Provided, nothing in this section or G.S. 18B-504 shall be construed to require a
15 conveyance to be sold when it can be used in the performance of official duties of the
16 law enforcement agency.

17 **"§ 20-404. Civil proceedings.**

18 (a) The Attorney General, any district attorney, or any aggrieved party may
19 institute civil proceedings against any person in any court of competent jurisdiction
20 seeking relief from conduct constituting a violation G.S. 20-402. If the plaintiff in the
21 proceeding proves the alleged violation, or its threat, by a preponderance of the
22 evidence, any court of competent jurisdiction after due provision for the rights of
23 innocent persons shall grant relief by entering an appropriate order or judgment,
24 including, but not limited to:

- 25 (1) Ordering any defendant to be divested of any interest in any property;
26 (2) Imposing reasonable restrictions upon the future activities or
27 investments of any defendant, including prohibiting any defendant
28 from engaging in the same type of endeavor as the defendant was
29 engaged in previously;or
30 (3) Ordering the surrender of the charter of a corporation organized under
31 the laws of the State or the revocation of a certificate authorizing a
32 foreign corporation to conduct business within the State upon finding
33 that the board of directors or a managerial agent acting on behalf of the
34 corporation, in conducting the affairs of the corporation, has
35 authorized or engaged in conduct made unlawful by this Article and
36 that, for the prevention of future criminal conduct, the public interest
37 requires the charter of the corporation be surrendered and the
38 corporation dissolved or the certificate revoked.

39 (b) In a proceeding under this section, injunctive relief must be granted in
40 conformity with the principles that govern the granting of relief from injury or
41 threatened injury in other cases, but no showing of special or irreparable injury must be
42 made. Pending final determination of a proceeding under this section, a temporary
43 restraining order or a preliminary injunction may be issued upon a showing of
44 immediate danger of significant injury, including the possibility that any judgment for

1 money damages might be difficult to execute, and, in a proceeding initiated by an
2 aggrieved person, upon the execution of proper bond against injury for an injunction
3 improvidently granted.

4 (c) Any person injured, directly or indirectly, by conduct constituting a violation
5 by any person of G.S. 20-402, in addition to any other relief, shall have a cause of
6 action for treble damages.

7 (d) A final judgment or decree rendered against the defendant in any civil or
8 criminal proceeding shall estop the defendant in any subsequent civil action or
9 proceeding brought by any person as to all matters as to which the judgment or decree
10 would be an estoppel as between the parties to the civil or criminal proceeding.

11 (e) Personal service of any process in an action under this section may be made
12 upon any person outside the State in a manner provided for in the North Carolina Rules
13 for Civil Procedure.

14 (f) Obtaining any civil remedy under this Article does not preclude obtaining any
15 other civil or criminal remedy under either this act or any other provision of law. Civil
16 remedies under this section are supplemental and are not mutually exclusive.

17 (g) Any real property upon which a violation of G.S. 20-402 is found, by a court
18 of competent jurisdiction, to have occurred shall be deemed a public nuisance as a
19 matter of law and shall be forfeited consistent with the provisions of G.S. 19-6.1.

20 **"§ 20-405. Penalties.**

21 A person violating G.S. 20-402 of this Article shall be guilty of a Class G felony. A
22 person having been previously convicted of a violation of this section shall, upon
23 commission of a second or subsequent violation, be guilty of a Class F felony."

24 **SECTION 2.** Prosecutions for offenses committed before the effective date
25 of this act are not abated or affected by this act, and the statutes that would be applicable
26 but for this act remain applicable to those prosecutions.

27 **SECTION 3.** If any provision of this act or its application is held invalid, the
28 invalidity does not affect other provisions or applications of this act that can be given
29 effect without the invalid provisions or application, and to this end the provisions of this
30 act are severable.

31 **SECTION 4.** This act becomes effective December 1, 2007, and applies to
32 offenses committed on or after that date.