

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 378
SENATE BILL 987

AN ACT TO CREATE THE FELONY OFFENSE OF CONTINUING CRIMINAL ENTERPRISE WITH REGARD TO CRIMINAL OFFENSES THAT ARE NOT DRUG OFFENSES, TO PROVIDE THAT FAILURE OF CERTAIN MERCHANTS TO PRODUCE A RECORD OR AFFIDAVIT WITH CERTAIN INFORMATION INDICATING THE SOURCE OF THE MERCHANT'S PRODUCTS AND TO SHOW THE RECORD OR AFFIDAVIT TO A LAW ENFORCEMENT OFFICER UPON REQUEST IS PRIMA FACIE EVIDENCE THAT THE PRODUCTS ARE STOLEN AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

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

"ARTICLE 2C.

"Continuing Criminal Enterprise.

"§ 14-7.20. Continuing criminal enterprise.

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

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

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

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

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

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

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

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

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

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

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

The merchant shall keep the record with the new merchandise being offered for sale and shall maintain the record for a period of three years after the merchandise is sold. Upon the request of a law enforcement agent, the merchant shall produce the record of the source of new merchandise the merchant offers for sale. If the merchant fails to produce either the requested record pursuant to this subsection or an affidavit pursuant to subsection (i2) of this section and the law enforcement agent has probable cause to believe the merchant's possession of the merchandise is unlawful, the agent may take the merchandise into custody as evidence. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1."

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

"(i2) The merchant may satisfy the record requirement of subsection (i1) of this section by producing, in lieu of a receipt or invoice, an affidavit under oath or affirmation identifying the source of the merchandise for which a record is requested, including the name and address of the seller, the license number of any auctioneer seller, and the date and place of purchase of the merchandise."

Sec. 4. G.S. 105-53 is amended by adding a new subsection to read:

"(i3) Notice of Records Requirement. – A specialty market operator shall conspicuously post in plain view of all specialty market vendors a sign informing all vendors that, effective July 1, 1996, failure to produce, upon the request of a law enforcement agent, either the records required under subsection (i1) of this section or an affidavit pursuant to subsection (i2) of this section is prima facie evidence of possession of stolen property."

Sec. 5. G.S. 105-53(l) reads as rewritten:

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

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

- (2) Knowingly give false information in the application process for a license or when registering pursuant to subsection (k).
- (3) If the person is an itinerant merchant, fail to display the license as required by subsection (i); if the person is a peddler or specialty market operator, fail to produce the license as required by subsection (i); or, if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, or specialty market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation.
- (4) Fail to provide name, address, or identification upon request as required by subsection (i) or provide false information in response to such a request.
- (5) ~~Fail to keep a record of the source of new merchandise offered for sale as required by subsection (i1).~~

It shall be a Class 1 misdemeanor to fail to either keep a record of new merchandise offered for sale as required by subsection (i1) of this section or to produce an affidavit pursuant to subsection (i2) of this section. It shall be a Class 1 misdemeanor to falsify a record required by subsection (i1) of this section."

Sec. 6. Effective July 1, 1996, G.S. 105-53(i1), as rewritten by Section 2 of this act, reads as rewritten:

"(i1) Records of Source of New Merchandise. – Each peddler, itinerant merchant, and specialty market vendor shall keep a written record of the source of new merchandise the merchant offers for sale. The record must be a receipt or an invoice from the person who sold the merchandise to the merchant. The invoice or receipt must specifically identify the product being sold by product name and quantity purchased and must contain the complete business name of the seller and a description of the type of business. If the seller was an individual, the receipt or invoice must contain the seller's drivers license number, its state of issuance and expiration date, and the seller's date of birth. The merchant must verify this information by comparing the seller's drivers license to the invoice or receipt and signing the invoice or receipt. A special identification card issued by the Division of Motor Vehicles may be used in place of the seller's drivers license for the purposes of providing and verifying information required under this subsection. If the seller was a corporation, the receipt or invoice must contain the corporation's federal tax identification number, the state of incorporation, the name and address of the corporation's registered agent in this State, if any, and the corporation's principal office address.

The merchant shall keep the record with the new merchandise being offered for sale and shall maintain the record for a period of three years after the merchandise is sold. Upon the request of a law enforcement agent, the merchant shall produce the record of

the source of new merchandise the merchant offers for sale. ~~If the merchant fails~~ A merchant's failure to produce either the requested record pursuant to this subsection or an affidavit pursuant to subsection (i2) of this section within a reasonable time of request by a law enforcement agent ~~and the law enforcement agent has probable cause to believe the merchant's possession of the merchandise is unlawful, the agent may take the merchandise into custody as evidence.~~ is prima facie evidence of possession of stolen property. Pending the production of the requested record or affidavit, the agent may take the merchandise into custody as evidence at the time the request is made. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1."

Sec. 7. Except as otherwise provided, this act becomes effective December 1, 1995, and applies to offenses committed on or after that date. Sections 2 and 3 of this act also apply only to merchandise acquired on or after that date. Section 6 of this act becomes effective July 1, 1996, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives