

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 1211
Judiciary I Committee Substitute Adopted 7/7/06**

Short Title: Blaire Thompson Drug Dealer Liability Act. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED
AN ACT TO CREATE THE BLAIRE THOMPSON FUND IN ORDER TO PROVIDE
COMPENSATION FOR DAMAGES RESULTING FROM THE ILLEGAL
DISTRIBUTION OF CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. This Act shall be known and may be cited as the 'Blaire Thompson Act.' The purpose of this act is to provide damages to persons in a community injured by an individual's use of illegal drugs. It establishes a transfer tax payable by drug dealers that will be directed to a fund for damages incurred as a result of an individual's use of an illegal controlled substance. This Article will shift the cost of the damage caused by the marketing of illegal drugs to those who illegally profit from that market, as well as deter others from entering the illegal drug market by subjecting them to substantial monetary loss.

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

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

c. The illegal distribution or transfer of controlled substances.

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

...

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

..."

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

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

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

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

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

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

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

...."

SECTION 5. G.S. 15B-8 reads as rewritten:

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

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

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

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

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

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

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

19 **"§ 15B-18. Subrogation by State.**

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

25 (b) The Crime Victims Compensation Fund and the Blaire Thompson Fund are is
26 an eligible recipient-eligible recipients for restitution under G.S. 15A-1021, 15A-1343,
27 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

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

33 (1) Join in the action as a party plaintiff to recover compensation awarded;

34 (2) Require that the claimant bring the action in his individual name as a
35 trustee in behalf of the State to recover compensation awarded; or

36 (3) Reserve its rights and do neither in the proposed action. If, as
37 requested by the Attorney General, the claimant brings the action as
38 trustee and recovers compensation awarded from the Crime Victims
39 Compensation Fund, he may deduct from the compensation recovered
40 in behalf of the State the reasonable expenses, including attorney fees,
41 allocable by the court for that recovery.

42 (d) If a judgment or verdict separately indicates economic loss and noneconomic
43 detriment, payments on the judgment shall be allocated between them in proportion to
44 the amounts indicated. In an action in a court of this State arising out of criminally

1 injurious conduct, the judge, on timely motion, shall direct the jury to return a special
2 verdict, indicating separately the awards for noneconomic detriment, punitive damages,
3 and economic loss.

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

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

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

13 **"§ 15B-21. Annual report.**

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

- 17 (1) The number of claims filed;
- 18 (2) The number of awards made;
- 19 (2a) The number of pending cases by year received;
- 20 (3) The amount of each award;
- 21 (4) A statistical summary of claims denied and awards made;
- 22 (5) The administrative costs of the Commission, including the
23 compensation of commissioners;
- 24 (6) The current unencumbered balance of the North Carolina Crime
25 Victims Compensation Fund;
- 26 (6a) The current unencumbered balance of the Blaire Thompson Fund;
- 27 (7) The amount of funds carried over from the prior fiscal year;
- 28 (8) The amount of funds received in the prior fiscal year from the
29 Department of Correction and from the compensation fund established
30 pursuant to the Victims Crime Act of 1984, 42 U.S.C. § 10601, et seq.;
- 31 and
- 32 (9) The amount of funds expected to be received in the current fiscal year,
33 as well as the amount actually received in the current fiscal year on the
34 date of the report, from the Department of Correction and from the
35 compensation fund established pursuant to the Victims Crime Act of
36 1984, 42 U.S.C. § 10601, et seq.

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

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

41 **"§ 15B-23.1. The Blaire Thompson Fund.**

42 There is established the Blaire Thompson Fund. Revenue in the Blair Thompson
43 Fund includes amounts credited to the Fund under G.S. 105-113.113 and other funds.
44 Any surplus in the Blaire Thompson Fund shall not revert. The Blaire Thompson Fund

1 shall be kept on deposit with the State Treasurer, as in the case of other State funds, and
2 may be invested by the State Treasurer in any lawful security for the investment of State
3 money. The Blaire Thompson Fund is subject to the oversight of the State Auditor
4 pursuant to Article 5A of Chapter 147 of the General Statutes."

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

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

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

11 "**§ 105-113.106. Definitions.**

12 The following definitions apply in this Article:

13 ...

14 (8b) Transfer. – The actual or constructive change of possession from one
15 person to another of a substance regulated by this Chapter.

16 ..."

17 **SECTION 11.** Article 2D of Chapter 105 is amended by adding a new
18 section to read:

19 "**§ 105-113.107B. Transfer tax on unauthorized substances.**

20 (a) Controlled Substances. – An transfer tax is levied on controlled substances
21 that have been transferred by dealers at the following rates:

22 (1) At the rate of one dollar (\$1.00) for each gram, or fraction thereof, of
23 harvested marijuana stems and stalks that have been separated from
24 and are not mixed with any other parts of the marijuana plant.

25 (2) At the rate of ten dollars (\$10.00) for each gram, or fraction thereof, of
26 marijuana, other than separated stems and stalks taxed under
27 subdivision (1) of this section.

28 (3) At the rate of one hundred twenty dollars (\$120.00) for each gram, or
29 fraction thereof, of cocaine.

30 (4) At the rate of two hundred fifty dollars (\$250.00) for each gram, or
31 fraction thereof, of heroin.

32 (5) At the rate of one hundred dollars (\$100.00) for each gram, or fraction
33 thereof, of any other controlled substance that is sold by weight.

34 (6) At the rate of two hundred dollars (\$200.00) for each 10 dosage units,
35 or fraction thereof, of any low-street-value drug that is not sold by
36 weight.

37 (7) At the rate of two hundred fifty dollars (\$250.00) for each 10 dosage
38 units, or fraction thereof, of any other controlled substance that is not
39 sold by weight.

40 (b) Weight. – A quantity of marijuana or other controlled substance is measured
41 by the weight of the transferred substance whether pure or impure or dilute, or by
42 dosage units when the substance is not sold by weight. A quantity of a controlled
43 substance is dilute if it consists of a detectable quantity of pure controlled substance and
44 any excipients or fillers.

1 (c) Illicit Spirituous Liquor. – An transfer tax is levied on illicit spirituous liquor
2 at the following rates:

3 (1) At the rate of three hundred dollars (\$300.00) for each gallon, or
4 fraction thereof, of illicit spirituous liquor sold by the drink.

5 (2) At the rate of five hundred dollars (\$500.00) for each gallon, or
6 fraction thereof, of illicit spirituous liquor not sold by the drink."

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

8 **"§ 105-113.107A. Exemptions.**

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

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

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

19 (1) Harvested mature marijuana stalks when separated from and not mixed
20 with any other parts of the marijuana plant.

21 (2) Fiber or any other product of marijuana stalks described in subdivision
22 (1) of this subsection, except resin extracted from the stalks.

23 (3) Marijuana seeds that have been sterilized and are incapable of
24 germination.

25 (4) Roots of the marijuana plant."

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

27 **"§ 105-113.108. Reports; revenue stamps.**

28 (a) Revenue Stamps. – The Secretary shall issue stamps to affix to unauthorized
29 substances to indicate payment of the ~~tax~~ taxes required by this Article. Dealers shall
30 report the taxes payable under this Article at the time and on the return prescribed by the
31 Secretary. Notwithstanding any other provision of law, dealers are not required to give
32 their name, address, social security number, or other identifying information on the
33 return, and the return is not required to be verified by oath or affirmation. Upon
34 payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of
35 the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

36 (b) Reports. – Every local law enforcement agency and every State law
37 enforcement agency must report to the Department within 48 hours after seizing an
38 unauthorized substance, or making an arrest of an individual in possession of an
39 unauthorized substance, listed in this subsection upon which a stamp has not been
40 affixed. The report must be in the form prescribed by the Secretary and it must include
41 the time and place of the arrest or seizure, the amount, location, and kind of substance,
42 the identification of an individual in possession of the substance and that individual's
43 social security number, and any other information prescribed by the Secretary. The
44 report must be made when the arrest or seizure involves any of the following

1 unauthorized substances upon which ~~aan~~ excise or transfer stamp has not been affixed
2 as required by this Article:

- 3 (1) More than 42.5 grams of marijuana.
- 4 (2) Seven or more grams of any other controlled substance that is sold by
5 weight.
- 6 (3) Ten or more dosage units of any other controlled substance that is not
7 sold by weight.
- 8 (4) Any illicit mixed beverage.
- 9 (5) Any illicit spirituous liquor.
- 10 (6) Mash."

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

12 **"§ 105-113.109. When tax payable.**

13 (a) The excise tax imposed by this Article is payable by any dealer who actually
14 or constructively possesses an unauthorized substance in this State upon which the tax
15 has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the
16 dealer acquires actual or constructive possession of a non-tax-paid unauthorized
17 substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which
18 case the tax is payable on the next working day. Upon payment of the tax, the dealer
19 shall permanently affix the appropriate stamps to the unauthorized substance. Once the
20 excise tax due on an unauthorized substance has been paid, no additional excise tax is
21 due under this Article even though the unauthorized substance may be handled by other
22 dealers.

23 (b) The transfer tax imposed by this Article is payable by any dealer who actually
24 or constructively transfers an unauthorized substance in this State upon which the
25 transfer tax has not been paid, as evidenced by an unexpired transfer stamp. The tax is
26 payable prior to any transfer, and stamps issued upon payment of the tax shall expire
27 five days from the date of the issuance. Upon payment of the tax, the dealer shall
28 permanently affix the appropriate stamps to the unauthorized substance to be
29 transferred. All transfers of unauthorized substances, including unauthorized substances
30 which have been previously transferred with appropriate stamps, must have a valid and
31 unexpired transfer stamp affixed."

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

33 **"§ 105-113.111. Assessments.**

34 Notwithstanding any other provision of law, an assessment against a dealer who
35 ~~possesses~~ possesses, or who has transferred, an unauthorized substance to which a
36 stamp has not been affixed as required by this Article shall be made as provided in this
37 section. The Secretary shall assess a tax, applicable penalties, and interest based on
38 personal knowledge or information available to the Secretary. The Secretary shall notify
39 the dealer in writing of the amount of the excise or transfer tax, penalty, and interest
40 due, and demand its immediate payment. The notice and demand shall be either mailed
41 to the dealer at the dealer's last known address or served on the dealer in person. If the
42 dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice
43 and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the
44 procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set

1 forth in G.S. 105-242, including causing execution to be issued immediately against the
2 personal property of the dealer, unless the dealer files with the Secretary a bond in the
3 amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use
4 all means available to collect the tax, penalty, and interest from any property in which
5 the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of
6 the assessment as provided in Article 9 of this Chapter."

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

8 "**§ 105-113.113. Use of tax proceeds.**

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

16 (1) The tax has been fully paid and the taxpayer has no current right under
17 G.S. 105-267 to seek a refund.

18 (2) The taxpayer has been notified of the final assessment of the tax under
19 G.S. 105-241.1 and has neither fully paid nor timely contested the tax
20 under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

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

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

32 (c) Refunds. – The refund of a tax that has already been distributed shall be
33 drawn initially from the State Unauthorized Substances Tax ~~Account.~~ for Excise Taxes
34 or Transfer Taxes, depending upon which account had been the source of the
35 distribution. The amount of refunded taxes that had been distributed to a law
36 enforcement agency under this section and any interest shall be subtracted from
37 succeeding distributions from the Account to that law enforcement agency. The amount
38 of refunded taxes that had been credited to the General Fund under this section and any
39 interest shall be subtracted from succeeding credits to the General Fund from the
40 Account."

41 **SECTION 17.** Sections 1 through 8, and 17, are effective when this act
42 becomes law. The remainder of this act becomes effective December 1, 2006, and
43 applies to transfers of illegal controlled substances on or after that date.