

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1354*
Committee Substitute Favorable 5/2/07

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

8 "Article 18.

9 "Motor Vehicle Chop Shop Act.

10 "§ 20-400. Definitions.

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

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

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

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

26 (2) Instrumentality. – Motor vehicle, motor vehicle part, other
27 conveyance, tool, implement, or other instrumentality.

28 (3) Vehicle identification number. – A number, a letter, a character, a
29 datum, a derivative, or a combination thereof, used by the

1 manufacturer or the Division for the purpose of uniquely identifying a
2 motor vehicle or motor vehicle part.

3 **"§ 20-401. Chop shop operation unlawful; restitution.**

4 (a) Criminal Penalties. – It shall be punishable as a Class H felony:

5 (1) For any person to own, operate, or conduct a chop shop.

6 (2) For any person to transport a motor vehicle or motor vehicle part to or
7 from a location knowing it to be a chop shop.

8 (3) For any person to sell, transfer, purchase, or receive a motor vehicle or
9 motor vehicle part either to or from a location knowing it to be a chop
10 shop.

11 (4) For any person to buy, dispose of, sell, transfer, or possess a motor
12 vehicle or motor vehicle part with the knowledge that the vehicle
13 identification number of the motor vehicle or motor vehicle part has
14 been altered, counterfeited, defaced, destroyed, disguised, falsified,
15 forged, obliterated, or removed. The provisions of this subdivision
16 shall not apply to a motor vehicle scrap processor who, in the normal
17 course of business and in good faith, processes a motor vehicle or
18 motor vehicle part by crushing, compacting, or other similar methods,
19 provided that any vehicle identification number is not removed from
20 the motor vehicle or motor vehicle part before or during the
21 processing.

22 (b) Restitution. – In addition to any other punishment provided for by law, any
23 person who violates this section shall be ordered to make restitution to the lawful owner
24 of any stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to
25 the extent that the owner has been compensated by the insurer, and to any other person
26 for any financial loss sustained as a result of a violation of this section.

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

33 The court shall determine the amount and method of restitution. In an extraordinary
34 case, the court may determine that the best interests of the victim and justice would not
35 be served by ordering restitution. In that case, the court shall make and enter specific
36 written findings on the record concerning the extraordinary circumstances presented
37 which militated against restitution."

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

39 "(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully
40 conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or
41 used by any person in the commission of armed or common-law robbery, or used in
42 violation of G.S. 20-401, or used by any person in the commission of any larceny when
43 the value of the property taken is more than two thousand dollars (\$2,000) shall be
44 subject to forfeiture as provided herein, except that:

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

26 As used in this section concerning a violation of G.S. 20-401, the term "conveyance"
27 includes any "instrumentality" as defined in G.S. 20-400(2)."

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

29 **"§ 19-1. What are nuisances under this Chapter.**

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

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

40 (b1) 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 activities or conditions which violate a local ordinance regulating
43 sexually oriented businesses so as to contribute to adverse secondary impacts shall
44 constitute a nuisance.

1 (b2) 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 chop shop activities in violation of G.S. 20-401.

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

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

9 **"§ 19-6.1. Forfeiture of real property.**

10 In all actions where a preliminary injunction, permanent injunction, or an order of
11 abatement is issued pursuant to this Article in which the nuisance consists of or includes
12 at least two prior occurrences within five years of the manufacture, possession with
13 intent to sell, or sale of controlled substances as defined by the North Carolina
14 Controlled Substances Act, ~~or~~ two prior occurrences of the possession of any controlled
15 substance included within Schedule I or II of that Act, or two prior occurrences within
16 five years of violation of G.S. 20-401, the real property on which the nuisance exists or
17 is maintained is subject to forfeiture in accordance with this section.

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

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

31 (2) If the court finds that one or more of the owners did not participate in
32 maintaining the nuisance on the property or did not have written notice
33 from the plaintiff prior to the action that the nuisance existed or was
34 maintained on the property, the court shall not order forfeiture of the
35 property immediately upon judgment. However, if after judgment and
36 an order directing the defendants to abate the nuisance, the nuisance
37 either continues, begins again, or otherwise recurs within five years of
38 the order and the defendants have not made good faith efforts to abate
39 the nuisance, the plaintiff may petition the court for forfeiture. Upon
40 such petition, the defendant owner or owners shall be given notice and
41 an opportunity to appear and be heard at a hearing to determine the
42 continuation or recurrence of the nuisance. If, in this hearing (i) the
43 plaintiff establishes by clear and convincing evidence that the
44 nuisance, with the owner's or owners' knowledge, has either continued,

1 begun again, or otherwise recurred, and (ii) the defendants fail to
2 establish that they have made and are continuing to make good faith
3 efforts to abate the nuisance, the court shall order that the property be
4 forfeited.

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

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

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

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

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

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