

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 264  
PROPOSED COMMITTEE SUBSTITUTE S264-CSSA-26 [v.1]

4/24/2013 4:16:48 PM

Short Title: Abate Nuisances/Drug Sales From Stores.

(Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED  
AN ACT TO STRENGTHEN THE NUISANCE LAWS TO CLOSE DOWN BUSINESSES  
THAT REPEATEDLY SELL CONTROLLED SUBSTANCES AND TO AMEND THE  
CRIMINAL LAWS TO PREVENT THE USE OF A BUSINESS FRONT TO SELL  
CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

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

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.

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

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

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

(d) No nuisance action under this Article may be brought against a place or business which is subject to regulation under Chapter 18B of the General Statutes when the basis for the action constitutes a violation of laws or regulations under that Chapter pertaining to the possession or sale of alcoholic beverages."

**SECTION 2.** G.S. 90-112 reads as rewritten:

**"§ 90-112. Forfeitures.**

(a) The following shall be subject to forfeiture:



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- 1 (1) All controlled substances which have been manufactured, distributed,  
2 dispensed, or acquired in violation of the provisions of this Article;  
3 (1a) Real property, including things growing on, affixed to, and found in land,  
4 used or intended to be used in any manner or part to commit or to facilitate  
5 the commission of a violation of this Chapter, except that:  
6 a. No real property used by any person shall be forfeited under the  
7 provisions of this section unless it shall appear that the owner was a  
8 consenting party or privy to a violation of this Chapter.  
9 b. No real property shall be forfeited under the provisions of this  
10 section by reason of any act or omission committed or omitted while  
11 such real property was unlawfully in the possession of a person other  
12 than the owner in violation of federal or State criminal laws.  
13 c. No real property shall be forfeited unless the violation involved is a  
14 felony under this Chapter.  
15 d. A forfeiture of real property encumbered by a bona fide security  
16 interest is subject to the interest of the secured party who had no  
17 knowledge of, or consented to, the act that is the basis for the  
18 forfeiture.

19 The court, in imposing sentence on a person convicted of a felony violation  
20 of this Chapter, shall order, in addition to any other sentence imposed, that  
21 the person forfeit to the State of North Carolina all property used or intended  
22 to be used in any manner or part to commit or to facilitate the violation.

23 ...  
24 (d) Whenever property is forfeited under this Article, the law-enforcement agency  
25 having custody of it may:

- 26 (1) Retain the property for official use; or  
27 (2) Sell any forfeited property which is not required to be destroyed by law and  
28 which is not harmful to the public, provided that the proceeds be disposed of  
29 for payment of all proper expenses of the proceedings for forfeiture and sale  
30 including expense of seizure, maintenance of custody, advertising, and court  
31 costs; or  
32 (3) Transfer any conveyance including vehicles, vessels, or aircraft which are  
33 forfeited under the provisions of this Article to the North Carolina  
34 Department of Justice when, in the discretion of the presiding judge and  
35 upon application of the North Carolina Department of Justice, said  
36 conveyance may be of official use to the North Carolina Department of  
37 Justice;  
38 (4) Upon determination by the director of any law-enforcement agency that a  
39 vehicle, vessel or aircraft transferred pursuant to the provisions of this  
40 Article is of no further use to said agency for use in official investigations,  
41 such vehicle, vessel or aircraft may be sold as surplus property in the same  
42 manner as other vehicles owned by the law-enforcement agency and the  
43 proceeds from such sale after deducting the cost of sale shall be paid to the  
44 treasurer or proper officer authorized to receive fines and forfeitures to be  
45 used for the school fund of the county in the county in which said vehicle,  
46 vessel or aircraft was seized; provided, that any vehicle transferred to any  
47 law-enforcement agency under the provisions of this Article which has been  
48 modified to increase speed shall be used in the performance of official duties  
49 only and not for resale, transfer or disposition other than as junk.

50 (d1) Notwithstanding the provisions of subsection (d), the law-enforcement agency  
51 having custody of money that is forfeited pursuant to this section shall pay it to the treasurer or

proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in which the money was seized.

(d2) Notwithstanding the provisions of subsection (d), the following procedures apply to a forfeiture of real property pursuant to subdivision (1a) of subsection (a) of this section:

- (1) Third-party transfer. – All right, title, and interest in property described in subdivision (1a) of subsection (a) of this section vests in the State upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the State, unless the transferee establishes in a hearing pursuant to subdivision (8) of this subsection that the transferee is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.
- (2) Protective orders. – Upon application of the State, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subdivision (1a) of subsection (a) of this section for forfeiture under this section. The application may be made upon the filing of an indictment or information charging a violation of this Chapter for which criminal forfeiture of real property may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section.
- (3) Execution. – Upon entry of an order of forfeiture under this section, the court shall authorize the State to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the State, enter such appropriate restraining orders or injunctions; require the execution of satisfactory performance bonds; appoint receivers, conservators, appraisers, accountants, or trustees; or take any other action to protect the interest of the State in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law or which are necessary to protect the interests of the State or third parties.
- (4) Disposition of property. – Following the seizure of property ordered forfeited under this section, the State shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by or transferable for value to the State shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with the defendant or on the defendant's behalf be eligible to purchase forfeited property at any sale held by the State. Upon application of a person, other than the defendant or a person acting in concert with the defendant or on the defendant's behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to the applicant.

- (5) Authority of the Attorney General. – With respect to property ordered forfeited under this section, the Attorney General is authorized to take any of the following actions:
- a. Grant petitions for mitigation or remission of forfeiture or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section.
  - b. Compromise claims arising under this section.
  - c. Direct the disposition by the State of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons.
  - d. Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.
  - e. Pay from the net proceeds all liens or security interests, according to their priorities, which are established by intervention or otherwise at the hearing provided in this subsection, or in other proceeding brought for said purpose as being bona fide security interests. The balance of the proceeds are to be paid to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county.
- (6) Applicability of civil forfeiture provisions. – Except to the extent that they are inconsistent with the provisions of this subsection, the other provisions of this section shall apply to a forfeiture under this subsection.
- (7) Bar on intervention. – Except as provided in subdivision (8) of this subsection, no party claiming an interest in property subject to forfeiture under this section may do either of the following:
- a. Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section.
  - b. Commence an action at law or equity against the State concerning the validity of the party's alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.
- (8) Third-party interests; petitions and hearing. – The following procedures apply to third-party interests in forfeited real property:
- a. Following the entry of an order of forfeiture under this section, the State shall publish notice of the order and of its intent to dispose of the property with a description thereof, in some newspaper published in the city or county where taken or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure. The State may also to the extent practicable provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.
  - b. Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the State pursuant to this section may, within 30 days of the final publication of notice or the person's receipt of notice under sub-subdivision a. of this subdivision, whichever is earlier, petition the court for a hearing to

- 1 adjudicate the validity of his alleged interest in the property. The  
2 hearing shall be held before the court alone, without a jury.
- 3 c. The petition shall be signed by the petitioner under penalty of perjury  
4 and shall set forth the nature and extent of the petitioner's right, title,  
5 or interest in the property; the time and circumstances of the  
6 petitioner's acquisition of the right, title, or interest in the property;  
7 any additional facts supporting the petitioner's claim; and the relief  
8 sought.
- 9 d. The hearing on the petition shall, to the extent practicable and  
10 consistent with the interests of justice, be held within 30 days of the  
11 filing of the petition. The court may consolidate the hearing on the  
12 petition with a hearing on any other petition filed by a person other  
13 than the defendant under this subsection.
- 14 e. At the hearing, the petitioner may testify and present evidence and  
15 witnesses on his own behalf and cross-examine witnesses who  
16 appear at the hearing. The State may present evidence and witnesses  
17 in rebuttal and in defense of its claim to the property and  
18 cross-examine witnesses who appear at the hearing. In addition to  
19 testimony and evidence presented at the hearing, the court shall  
20 consider the relevant portions of the record of the criminal case  
21 which resulted in the order of forfeiture.
- 22 f. If, after the hearing, the court determines that the petitioner has  
23 established by a preponderance of the evidence that:
- 24 1. The petitioner has a legal right, title, or interest in the  
25 property, and such right, title, or interest renders the order of  
26 forfeiture invalid in whole or in part because the right, title, or  
27 interest was vested in the petitioner rather than the defendant  
28 or was superior to any right, title, or interest of the defendant  
29 at the time of the commission of the acts which gave rise to  
30 the forfeiture of the property under this section; or
- 31 2. The petitioner is a bona fide purchaser for value of the right,  
32 title, or interest in the property and was at the time of  
33 purchase reasonably without cause to believe that the  
34 property was subject to forfeiture under this section;  
35 then the court shall amend the order of forfeiture in accordance with  
36 its determination.
- 37 g. Following the court's disposition of all petitions filed under this  
38 subdivision, or if no such petitions are filed following the expiration  
39 of the period provided in sub-subdivision b. of this subdivision for  
40 the filing of such petitions, the State shall have clear title to property  
41 that is the subject of the order of forfeiture and may warrant good  
42 title to any subsequent purchaser or transferee.
- 43 (9) Construction. – The provisions of this subsection shall be liberally construed  
44 to effectuate its remedial purposes.

45 ...."

46 **SECTION 3.** G.S. 15A-533 reads as rewritten:

47 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

48 (a) A defendant charged with any crime, whether capital or noncapital, who is alleged  
49 to have committed this crime while still residing in or subsequent to his escape or during an  
50 unauthorized absence from involuntary commitment in a mental health facility designated or  
51 licensed by the Department of Health and Human Services, and whose commitment is

determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds that the person has been charged with a violation of G.S. 90-95(a)(1), the person is the owner or person who has operational control of a place or business, the controlled substance which is the basis for the charge was located at the place of business and finds either of the following:

- (1) The person has been previously arrested for a violation of G.S. 90-95(a)(1) and the controlled substance which was the basis for the previous charge was located at a place of business owned by or under the operational control of the person, and the person had been released on bail for the previous arrest at the time of the arrest for the current charge.
- (2) The person has a prior conviction for a violation of G.S. 90-95(a)(1), and the controlled substance which was the basis of the prior conviction was located at a place of business owned by or under the operational control of the person.

For purposes of this subsection, a "place of business" is any location where a member of the general public may purchase, lease, or utilize goods, services, or other things of value.

1        (g)       Persons who are considered for bond under the provisions of subsections ~~(d) and~~  
2 ~~(e)(d), (e), and (f)~~ of this section may only be released by a district or superior court judge upon  
3 a finding that there is a reasonable assurance that the person will appear and release does not  
4 pose an unreasonable risk of harm to the community."

5        **SECTION 4.** Section 1 of this act is effective when the act becomes law and  
6 applies to nuisance actions filed on or after that date. Sections 2 and 3 of this act become  
7 effective December 1, 2013, and apply to offenses committed on or after that date. The  
8 remainder of this act is effective when it becomes law.