

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

5

SENATE BILL 699*
Judiciary I Committee Substitute Adopted 5/5/89
Third Edition Engrossed 6/21/89
Fourth Edition Engrossed 6/30/89
House Committee Substitute Favorable 8/2/89

Short Title: Controlled Substance Tax.

(Public)

Sponsors:

Referred to:

March 30, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPOSE AN EXCISE TAX ON CONTROLLED SUBSTANCES.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 105 of the General Statutes is amended by adding a new
5 Article to read:

6 **“ARTICLE 2D.**
7 **“SCHEDULE B-D. CONTROLLED SUBSTANCE TAX.**

8 **“§ 105-113.90. Purpose.**

9 The purpose of this Article is to levy an excise tax on persons who possess
10 controlled substances and counterfeit controlled substances in violation of North
11 Carolina law and to provide that a person who possesses such substances in violation of
12 this Article is guilty of a felony. Nothing in this Article may in any manner provide
13 immunity from criminal prosecution for a person who possesses an illegal substance.

14 **“§ 105-113.91. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) Controlled Substance. Defined in G.S. 90-87.
- 17 (2) Counterfeit Controlled Substance. Defined in G.S. 90-87.
- 18 (3) Dealer. A person who in violation of G.S. 90-95 possesses, delivers,
19 sells, or manufactures more than 42.5 grams of marijuana, or seven or
20 more grams of any other controlled substance or counterfeit controlled

1 substance that is sold by weight, or 10 or more dosage units of any
2 other controlled substance or counterfeit controlled substance that is
3 not sold by weight.

4 (4) Deliver. Defined in G.S. 90-87.

5 (5) Manufacture. Defined in G.S. 90-87.

6 (6) Marijuana. Defined in G.S. 90-87.

7 (7) Person. An individual or an entity that identifies itself as an entity and
8 exists for a purpose, including a corporation, firm, partnership,
9 institution, or other unit.

10 (8) Secretary. The Secretary of the Department of Revenue.

11 **"§ 105-113.92. Excise tax on controlled substances.**

12 An excise tax is levied on controlled substances and counterfeit controlled
13 substances possessed by dealers at the following rates:

14 (1) At the rate of three dollars and fifty cents (\$3.50) for each gram, or
15 fraction thereof, of marijuana or counterfeit marijuana.

16 (2) At the rate of two hundred dollars (\$200.00) for each gram, or fraction
17 thereof, of any other controlled substance or counterfeit controlled
18 substance that is sold by weight.

19 (3) At the rate of four hundred dollars (\$400.00) for each 10 dosage units,
20 or fraction thereof, of any other controlled substance or counterfeit
21 controlled substance that is not sold by weight.

22 A quantity of marijuana or other controlled substance is measured by the weight of
23 the substance whether pure or impure or dilute, or by dosage units when the substance is
24 not sold by weight, in the dealer's possession. A quantity of a controlled substance is
25 dilute if it consists of a detectable quantity of pure controlled substance and any
26 excipients or fillers.

27 **"§ 105-113.93. Reports; revenue stamps.**

28 The Secretary shall issue stamps to affix to controlled substances and counterfeit
29 controlled substances to indicate payment of the tax required by this Article. Dealers
30 shall report the taxes payable under this Article at the time and on the form prescribed
31 by the Secretary. Dealers are not required to give their name, address, social security
32 number, or other identifying information on the form. Upon payment of the tax, the
33 Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes
34 may be paid and stamps may be issued either by mail or in person.

35 **"§ 105-113.94. When tax payable.**

36 The tax imposed by this Article is payable by any dealer who possesses a controlled
37 substance or counterfeit controlled substance in this State upon which the tax has not
38 been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer
39 acquires a non-tax-paid controlled substance or counterfeit controlled substance,
40 exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax
41 is payable on the next working day. Upon payment of the tax, the dealer shall
42 permanently affix the appropriate stamps to the controlled substance. Once the tax due
43 on a controlled substance or counterfeit controlled substance has been paid, no

1 additional tax is due under this Article even though the controlled substance or
2 counterfeit controlled substance may be handled by other dealers.

3 **"§ 105-113.95. Violations of Article a felony.**

4 A dealer who violates this Article is guilty of a Class I felony, and is subject to an
5 additional penalty of one hundred percent (100%) of any tax due from the dealer.
6 Notwithstanding any other provision of law, no prosecution for a violation of this
7 Article shall be barred before the expiration of six years after the date of the violation.

8 **"§ 105-113.96. Assessments.**

9 Notwithstanding any other provision of law, an assessment against a dealer who
10 possesses a controlled substance to which a stamp has not been affixed as required by
11 this Article shall be made as provided in this section. The Secretary shall assess a tax,
12 applicable penalties, and interest based on personal knowledge or information available
13 to the Secretary. The Secretary shall notify the dealer in writing of the amount of the
14 tax, penalty, and interest due, and demand its immediate payment. The notice and
15 demand shall be either mailed to the dealer at the dealer's last known address or served
16 on the dealer in person. If the dealer does not pay the tax, penalty, and interest
17 immediately upon receipt of the notice and demand, the Secretary shall collect the tax,
18 penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(q) for
19 jeopardy assessments or the procedure set forth in G.S. 105-242, including causing
20 execution to be issued immediately against the personal property of the dealer unless the
21 dealer files with the Secretary a bond in the amount of the asserted liability for the tax,
22 penalty, and interest. The Secretary shall use all means available to collect the tax,
23 penalty, and interest from any property in which the dealer has a legal, equitable, or
24 beneficial interest. The dealer may seek review of the assessment as provided in Article
25 9 of this Chapter.

26 **"§ 105-113.97. Confidentiality of information.**

27 Notwithstanding any other provision of law, information obtained pursuant to this
28 Article is confidential and may not be disclosed or, unless independently obtained, used
29 in a criminal prosecution other than a prosecution for a violation of this Article. Stamps
30 issued pursuant to this Article may not be used in a criminal prosecution other than a
31 prosecution for a violation of this Article. A person who discloses information obtained
32 pursuant to this Article is guilty of a misdemeanor. This section does not prohibit the
33 Secretary from publishing statistics that do not disclose the identity of dealers or the
34 contents of particular returns or reports."

35 Sec. 2. Article 4 of Chapter 114 of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 114-18.1. Information on controlled substances.**

38 (a) Every local law enforcement agency and every State law enforcement agency
39 shall, within 48 hours after making an arrest of an individual in possession of a
40 controlled substance or a counterfeit controlled substance, report the arrest to the State
41 Bureau of Investigation. Every local law enforcement agency and every State law
42 enforcement agency shall, within 48 hours after seizing a controlled substance or a
43 counterfeit controlled substance, report the seizure to the State Bureau of Investigation.
44 The report shall include the time and place of the arrest or seizure, the amount and

1 location of the substance, and the identification of any individual in possession of the
2 substance.

3 (b) The following definitions apply in this section:

4 (1) Controlled Substance. Defined in G.S. 90-87.

5 (2) Counterfeit Controlled Substance. Defined in G.S. 90-87.

6 (3) Local Law Enforcement Agency. A municipal police department, a
7 county police department, or a sheriff's department.

8 (4) State Law Enforcement Agency. Any State agency, force, department,
9 or unit responsible for enforcing criminal laws."

10 Sec. 3. G.S. 114-19 reads as rewritten:

11 **"§ 114-19. Criminal statistics.**

12 (a) It shall be the duty of the State Bureau of Investigation to receive and collect
13 police information, to assist in locating, identifying, and keeping records of criminals in
14 this State, and from other states, and to compare, classify, compile, publish, make
15 available and disseminate any and all such information to the sheriffs, constables, police
16 authorities, courts or any other officials of the State requiring such criminal
17 identification, crime statistics and other information respecting crimes local and
18 national, and to conduct surveys and studies for the purpose of determining so far as is
19 possible the source of any criminal conspiracy, crime wave, movement or cooperative
20 action on the part of the criminals, reporting such conditions, and to cooperate with all
21 officials in detecting and preventing.

22 (b) The State Bureau of Investigation shall, on a daily basis, notify the
23 Department of Revenue of all reports it receives pursuant to G.S. 114-18.1 of arrests
24 and seizures involving controlled substances and counterfeit substances. The Bureau
25 shall also, as soon as practicable, provide the Department with any additional
26 information it receives regarding such arrests and seizures."

27 Sec. 4. G.S. 90-112(c) reads as rewritten:

28 "(c) Property taken or detained under this section shall not be repleviable, but shall be
29 deemed to be in custody of the law-enforcement agency seizing it, which may:

30 (1) Place the property under seal; or,

31 (2) Remove the property to a place designated by it; or,

32 (3) Request that the North Carolina Department of Justice take custody of
33 the property and remove it to an appropriate location for disposition in
34 accordance with law.

35 Any property seized by a State, local, or county law enforcement officer shall be held in
36 safekeeping as provided in this subsection until an order of disposition is properly
37 entered by the judge."

38 Sec. 5. This act shall not be construed to obligate the General Assembly to
39 make any appropriation to implement the provisions of this act. Each department and
40 agency to which this act applies shall implement the provisions of this act from funds
41 otherwise appropriated to that department or agency.

42 Sec. 6. Because at this time it is impossible to estimate the amount of
43 additional revenue that may be generated by this act, sound budgetary practices dictate
44 that the taxes collected pursuant to this act should not be expended before the 1990-91

1 fiscal year. Therefore, notwithstanding any other provision of law, the Secretary of
2 Revenue shall deposit the taxes collected pursuant to this act in a special fund to the
3 credit of the State Treasurer, to be called the State Controlled Substances Tax Fund. It
4 is the intent of the General Assembly that these tax proceeds shall remain in the Special
5 Fund until the General Assembly provides that they shall be deposited in the General
6 Fund.

7 Sec. 7. This act shall become effective January 1, 1990.