

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 987  
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Short Title: Criminal Enterprises.

(Public)

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Sponsors:

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Referred to:

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May 4, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE THE FELONY OFFENSE OF CONTINUING CRIMINAL  
3 ENTERPRISE WITH REGARD TO CRIMINAL OFFENSES THAT ARE NOT  
4 DRUG OFFENSES, TO PROVIDE THAT FAILURE OF CERTAIN MERCHANTS  
5 TO PRODUCE A RECORD OR AFFIDAVIT WITH CERTAIN INFORMATION  
6 INDICATING THE SOURCE OF THE MERCHANT'S PRODUCTS AND TO  
7 SHOW THE RECORD OR AFFIDAVIT TO A LAW ENFORCEMENT OFFICER  
8 UPON REQUEST IS PRIMA FACIE EVIDENCE THAT THE PRODUCTS ARE  
9 STOLEN AND TO MAKE OTHER CHANGES.  
10 The General Assembly of North Carolina enacts:  
11 Section 1. Chapter 14 of the General Statutes is amended by adding a new  
12 Article to read:  
13 **"ARTICLE 2C.**  
14 **"CONTINUING CRIMINAL ENTERPRISE.**  
15 **"§ 14-7.20. Continuing criminal enterprise.**

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

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

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

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

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

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

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

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

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

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

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

38       The merchant shall keep the record with the new merchandise being offered for sale  
39 and shall maintain the record for a period of three years after the merchandise is sold.  
40 Upon the request of a law enforcement agent, the merchant shall produce the record of  
41 the source of new merchandise the merchant offers for sale. If the merchant fails to  
42 produce either the requested record pursuant to this subsection or an affidavit pursuant to  
43 subsection (i2) of this section and the law enforcement agent has probable cause to

1 believe the merchant's possession of the merchandise is unlawful, the agent may take the  
2 merchandise into custody as evidence. Merchandise impounded under this subsection  
3 must be disposed of in accordance with G.S. 15-11.1."

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

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

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

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

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

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

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

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

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

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

19           The merchant shall keep the record with the new merchandise being offered for sale  
20 and shall maintain the record for a period of three years after the merchandise is sold.  
21 Upon the request of a law enforcement agent, the merchant shall produce the record of  
22 the source of new merchandise the merchant offers for sale. ~~If the merchant fails—A~~  
23 merchant's failure to produce either the requested record pursuant to this subsection or an  
24 affidavit pursuant to subsection (i2) of this section within a reasonable time of  
25 request by a law enforcement agent and the law enforcement agent has probable cause to  
26 believe the merchant's possession of the merchandise is unlawful, the agent may take the  
27 merchandise into custody as evidence. is prima facie evidence of possession of stolen  
28 property. Pending the production of the requested record or affidavit, the agent may take  
29 the merchandise into custody as evidence at the time the request is made. Merchandise  
30 impounded under this subsection must be disposed of in accordance with G.S. 15-11.1."

31           Sec. 7. Except as otherwise provided, this act becomes effective December 1,  
32 1995, and applies to offenses committed on or after that date. Sections 2 and 3 of this  
33 act also apply only to merchandise acquired on or after that date. Section 6 of this act  
34 becomes effective July 1, 1996, and applies to offenses committed on or after that date.