

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1357*

Short Title: Motor Vehicle Chop Shop Act.

(Public)

Sponsors: Senators Graham; Clodfelter and Dannelly.

Referred to: Judiciary I (Civil).

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A UNIFORM MOTOR VEHICLE CHOP SHOP LAW
3 REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF
4 STOLEN OR ALTERED 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, Stolen, And Altered Property Act.

10 **"§ 20-400. Short title.**

11 This act may be cited as the "Motor Vehicle Chop Shop Act."

12 **"§ 20-401. Definitions.**

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

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

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

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

27 (2) Unidentifiable. – The uniqueness of a motor vehicle or motor vehicle
28 part cannot be established by either expert law enforcement
29 investigative personnel specially trained and experienced in motor

1 vehicle theft investigative procedures and motor vehicle identification
2 examination techniques or by expert employees of not-for-profit motor
3 vehicle theft prevention agencies specially trained and experienced in
4 motor vehicle theft investigation procedures and motor vehicle
5 identification examination techniques.

6 (3) Vehicle identification number. – A number, a letter, a character, a
7 datum, a derivative, or a combination thereof, used by the
8 manufacturer or the Department of Motor Vehicles for the purpose of
9 uniquely identifying a motor vehicle or motor vehicle part.

10 **"§ 20-402. Chop shop operation unlawful; restitution.**

11 (a) It shall be unlawful for any person to own, operate, or conduct a chop shop, to
12 transport a motor vehicle or motor vehicle part to or from a location knowing it to be a
13 chop shop, or sell, transfer, purchase, or receive a motor vehicle or motor vehicle part
14 either to or from a location knowing it to be a chop shop.

15 (b) It shall be unlawful for any person to knowingly alter, counterfeit, deface,
16 destroy, disguise, falsify, forge, obliterate, or knowingly remove a vehicle identification
17 number, or cause any of the above to be done, with the intent to misrepresent the
18 identity or prevent the identification of a motor vehicle or motor vehicle part.

19 (c) It shall be unlawful for any person to buy, dispose, sell, transfer, or possess a
20 motor vehicle or motor vehicle part with the knowledge that the vehicle identification
21 number of the motor vehicle or motor vehicle part has been altered, counterfeited,
22 defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

23 The provisions of this subsection shall not apply to a motor vehicle scrap processor
24 who, in the normal course of business and in good faith, processes a motor vehicle or
25 motor vehicle part by crushing, compacting, or other similar methods, provided that any
26 vehicle identification number is not removed from the motor vehicle or motor vehicle
27 part before or during the processing.

28 (d) In addition to any other punishment provided for by law, any person who
29 violates this section shall be ordered to make restitution to the lawful owner of any
30 stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the
31 extent that the owner has been compensated by the insurer, and to any other person for
32 any financial loss sustained as a result of a violation of this section.

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

39 The court shall determine the amount and method of restitution. In an extraordinary
40 case, the court may determine that the best interests of the victim and justice would not
41 be served by ordering restitution. In that case, the court shall make and enter specific
42 written findings on the record concerning the extraordinary circumstances presented
43 which militated against restitution.

1 "§ 20-403. Seizure of the motor vehicles, tools, implements, or other
2 instrumentalities of the crime.

3 (a) All motor vehicles, motor vehicle parts, other conveyances, tools,
4 implements, or other instrumentalities possessed or used by any person in violation of
5 G.S. 20-402 shall be subject to forfeiture as provided herein, except that:

6 (1) No motor vehicles, motor vehicle parts, other conveyances, tools,
7 implements, or other instrumentalities used by any person as a
8 common carrier in the transaction of the business of the common
9 carrier shall be forfeited under the provisions of this section unless it
10 shall appear that the owner or other person in custody or control of
11 such conveyance was a consenting party or privy to a violation that
12 may subject the conveyance to forfeiture under this section;

13 (2) No motor vehicles, motor vehicle parts, other conveyances, tools,
14 implements, or other instrumentalities shall be forfeited under the
15 provisions of this section by reason of any act or omission committed
16 or omitted while such conveyance was unlawfully in the possession of
17 a person other than the owner in violation of the criminal laws of the
18 United States, or any state;

19 (3) No motor vehicles, motor vehicle parts, other conveyances, tools,
20 implements, or other instrumentalities shall be forfeited pursuant to
21 this section unless the violation involved is a felony;

22 (4) A forfeiture of any motor vehicles, motor vehicle parts, other
23 conveyances, tools, implements, or other instrumentalities encumbered
24 by a bona fide security interest is subject to the interest of the secured
25 party who neither had knowledge of nor consented to the act or
26 omission;

27 (5) No motor vehicles, motor vehicle parts, other conveyances, tools,
28 implements, or other instrumentalities shall be forfeited under the
29 provisions of this section unless the owner knew or had reason to
30 believe the vehicle was being used in the commission of any violation
31 that may subject the motor vehicles, motor vehicle parts, other
32 conveyances, tools, implements, or other instrumentalities to forfeiture
33 under this section; and

34 (6) The trial judge in the criminal proceeding which may subject the motor
35 vehicles, motor vehicle parts, other conveyances, tools, implements, or
36 other instrumentalities to forfeiture may order the seized conveyance
37 returned to the owner if he finds forfeiture inappropriate. If the
38 conveyance is not returned to the owner, the procedures provided in
39 subsection (e) of this section shall apply.

40 (b) Any motor vehicles, motor vehicle parts, other conveyances, tools,
41 implements, or other instrumentalities subject to forfeiture under this section may be
42 seized by any law enforcement officer upon process issued by any district or superior
43 court having original jurisdiction over the offense except that seizure without such
44 process may be made when:

- 1 (1) The seizure is incident to an arrest or subject to a search under a search
2 warrant; or
3 (2) The property subject to seizure has been the subject of a prior
4 judgment in favor of the State in a criminal injunction or forfeiture
5 proceeding under this section.

6 (c) The motor vehicles, motor vehicle parts, other conveyances, tools,
7 implements, or other instrumentalities shall be deemed to be in custody of the law
8 enforcement agency seizing it. The law enforcement agency may remove the property to
9 a place designated by it or request that the North Carolina Department of Justice or
10 Department of Crime Control and Public Safety take custody of the property and
11 remove it to an appropriate location for disposition in accordance with law; provided,
12 the conveyance shall be returned to the owner upon execution by him of a good and
13 valid bond, with sufficient sureties, in a sum double the value of the property, which
14 said bond shall be approved by an officer of the agency seizing the motor vehicles,
15 motor vehicle parts, other conveyances, tools, implements, or other instrumentalities
16 and shall be conditioned upon the return of said property to the custody of said officer
17 on the day of trial to abide the judgment of the court.

18 (d) Whenever a motor vehicle, motor vehicle part, other conveyance, tool,
19 implement, or other instrumentality is forfeited under this section, the law enforcement
20 agency having custody of it may:

- 21 (1) Retain the motor vehicles, motor vehicle parts, other conveyances,
22 tools, implements, or other instrumentalities for official use; or
23 (2) Transfer the motor vehicles, motor vehicle parts, other conveyances,
24 tools, implements, or other instrumentalities which were forfeited
25 under the provisions of this section to the North Carolina Department
26 of Justice or to the North Carolina Department of Crime Control and
27 Public Safety when, in the discretion of the presiding judge and upon
28 application of the North Carolina Department of Justice or the North
29 Carolina Department of Crime Control and Public Safety, said motor
30 vehicles, motor vehicle parts, other conveyances, tools, implements, or
31 other instrumentalities may be of official use to the North Carolina
32 Department of Justice or the North Carolina Department of Crime
33 Control and Public Safety; or
34 (3) Upon determination by the director of any law enforcement agency
35 that a motor vehicle, motor vehicle part, other conveyance, tool,
36 implement, or other instrumentality transferred pursuant to the
37 provisions of this section is of no further use to said agency, such
38 motor vehicles, motor vehicle parts, other conveyances, tools,
39 implements, or other instrumentalities may be sold as surplus property
40 in the same manner as other motor vehicles, motor vehicle parts, other
41 conveyances, tools, implements, or other instrumentalities owned by
42 the law enforcement agency. The proceeds from such sale, after
43 deducting the cost thereof, shall be paid to the school fund of the
44 county in which said conveyance was seized. Any conveyance

1 transferred to any law enforcement agency under the provisions of this
2 section which has been modified or especially equipped from its
3 original manufactured condition so as to increase its speed shall be
4 used in the performance of official duties only. Such conveyance shall
5 not be resold, transferred, or disposed of other than as junk unless the
6 special equipment or modification has been removed and destroyed
7 and the vehicle restored to its original manufactured condition.

8 (e) All motor vehicles, motor vehicle parts, other conveyances, tools,
9 implements, or other instrumentalities subject to forfeiture under the provisions of this
10 section shall be forfeited pursuant to the procedures for forfeiture of conveyances used
11 to conceal, convey, or transport intoxicating beverages found in G.S. 18B-504.
12 Provided, nothing in this section or G.S. 18B-504 shall be construed to require a
13 conveyance to be sold when it can be used in the performance of official duties of the
14 law enforcement agency.

15 **"§ 20-404. Civil proceedings.**

16 (a) The Attorney General, any district attorney, or any aggrieved party may
17 institute civil proceedings against any person in any court of competent jurisdiction
18 seeking relief from conduct constituting a violation G.S. 20-402. If the plaintiff in the
19 proceeding proves the alleged violation, or its threat, by a preponderance of the
20 evidence, any court of competent jurisdiction after due provision for the rights of
21 innocent persons shall grant relief by entering an appropriate order or judgment,
22 including, but not limited to:

- 23 (1) Ordering any defendant to be divested of any interest in any property;
24 (2) Imposing reasonable restrictions upon the future activities or
25 investments of any defendant, including prohibiting any defendant
26 from engaging in the same type of endeavor as the defendant was
27 engaged in previously;or
28 (3) Ordering the surrender of the charter of a corporation organized under
29 the laws of the State or the revocation of a certificate authorizing a
30 foreign corporation to conduct business within the State upon finding
31 that the board of directors or a managerial agent acting on behalf of the
32 corporation, in conducting the affairs of the corporation, has
33 authorized or engaged in conduct made unlawful by this Article and
34 that, for the prevention of future criminal conduct, the public interest
35 requires the charter of the corporation be surrendered and the
36 corporation dissolved or the certificate revoked.

37 (b) In a proceeding under this section, injunctive relief must be granted in
38 conformity with the principles that govern the granting of relief from injury or
39 threatened injury in other cases, but no showing of special or irreparable injury must be
40 made. Pending final determination of a proceeding under this section, a temporary
41 restraining order or a preliminary injunction may be issued upon a showing of
42 immediate danger of significant injury, including the possibility that any judgment for
43 money damages might be difficult to execute, and, in a proceeding initiated by an

1 aggrieved person, upon the execution of proper bond against injury for an injunction
2 improvidently granted.

3 (c) Any person injured, directly or indirectly, by conduct constituting a violation
4 by any person of G.S. 20-402, in addition to any other relief, shall have a cause of
5 action for treble damages.

6 (d) A final judgment or decree rendered against the defendant in any civil or
7 criminal proceeding shall estop the defendant in any subsequent civil action or
8 proceeding brought by any person as to all matters as to which the judgment or decree
9 would be an estoppel as between the parties to the civil or criminal proceeding.

10 (e) Personal service of any process in an action under this section may be made
11 upon any person outside the State in a manner provided for in the North Carolina Rules
12 for Civil Procedure.

13 (f) Obtaining any civil remedy under this Article does not preclude obtaining any
14 other civil or criminal remedy under either this act or any other provision of law. Civil
15 remedies under this section are supplemental and are not mutually exclusive.

16 (g) Any real property upon which a violation of G.S. 20-402 is found, by a court
17 of competent jurisdiction, to have occurred shall be deemed a public nuisance as a
18 matter of law and shall be forfeited consistent with the provisions of G.S. 19-6.1.

19 **"§ 20-405. Penalties.**

20 A person violating G.S. 20-402 of this Article shall be guilty of a Class G felony. A
21 person having been previously convicted of a violation of this section shall, upon
22 commission of a second or subsequent violation, be guilty of a Class F felony."

23 **SECTION 2.** Prosecutions for offenses committed before the effective date
24 of this act are not abated or affected by this act, and the statutes that would be applicable
25 but for this act remain applicable to those prosecutions.

26 **SECTION 3.** If any provision of this act or its application is held invalid, the
27 invalidity does not affect other provisions or applications of this act that can be given
28 effect without the invalid provisions or application, and to this end the provisions of this
29 act are severable.

30 **SECTION 4.** This act becomes effective December 1, 2007, and applies to
31 offenses committed on or after that date.