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SENATE DRS15104-RK-23 (03/04)

Short Title: Abate Nuisances/Drug Sales From Stores. (Public)

Sponsors: Senator Brown (Primary Sponsor).

Referred to:

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

6 The General Assembly of North Carolina enacts:

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

8 "**§ 19-1. What are nuisances under this Chapter.**

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

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

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

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

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

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

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

35 "**§ 90-112. Forfeitures.**

36 (a) The following shall be subject to forfeiture:



- 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

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

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

5 (1) Third-party transfer. – All right, title, and interest in property described in
6 subdivision (1a) of subsection (a) of this section vests in the State upon the
7 commission of the act giving rise to forfeiture under this section. Any such
8 property that is subsequently transferred to a person other than the defendant
9 may be the subject of a special verdict of forfeiture and thereafter shall be
10 ordered forfeited to the State, unless the transferee establishes in a hearing
11 pursuant to subdivision (8) of this subsection that the transferee is a bona
12 fide purchaser for value of such property who at the time of purchase was
13 reasonably without cause to believe that the property was subject to
14 forfeiture under this section.

15 (2) Protective orders. – Upon application of the State, the court may enter a
16 restraining order or injunction, require the execution of a satisfactory
17 performance bond, or take any other action to preserve the availability of
18 property described in subdivision (1a) of subsection (a) of this section for
19 forfeiture under this section. The application may be made upon the filing of
20 an indictment or information charging a violation of this Chapter for which
21 criminal forfeiture of real property may be ordered under this section and
22 alleging that the property with respect to which the order is sought would, in
23 the event of conviction, be subject to forfeiture under this section.

24 (3) Execution. – Upon entry of an order of forfeiture under this section, the
25 court shall authorize the State to seize all property ordered forfeited upon
26 such terms and conditions as the court shall deem proper. Following entry of
27 an order declaring the property forfeited, the court may, upon application of
28 the State, enter such appropriate restraining orders or injunctions; require the
29 execution of satisfactory performance bonds; appoint receivers,
30 conservators, appraisers, accountants, or trustees; or take any other action to
31 protect the interest of the State in the property ordered forfeited. Any income
32 accruing to or derived from property ordered forfeited under this section
33 may be used to offset ordinary and necessary expenses to the property which
34 are required by law or which are necessary to protect the interests of the
35 State or third parties.

36 (4) Disposition of property. – Following the seizure of property ordered
37 forfeited under this section, the State shall direct the disposition of the
38 property by sale or any other commercially feasible means, making due
39 provision for the rights of any innocent persons. Any property right or
40 interest not exercisable by or transferable for value to the State shall expire
41 and shall not revert to the defendant, nor shall the defendant or any person
42 acting in concert with the defendant or on the defendant's behalf be eligible
43 to purchase forfeited property at any sale held by the State. Upon application
44 of a person, other than the defendant or a person acting in concert with the
45 defendant or on the defendant's behalf, the court may restrain or stay the sale
46 or disposition of the property pending the conclusion of any appeal of the
47 criminal case giving rise to the forfeiture, if the applicant demonstrates that
48 proceeding with the sale or disposition of the property will result in
49 irreparable injury, harm, or loss to the applicant.

- 1 (5) Authority of the Attorney General. – With respect to property ordered
2 forfeited under this section, the Attorney General is authorized to take any of
3 the following actions:
4 a. Grant petitions for mitigation or remission of forfeiture or take any
5 other action to protect the rights of innocent persons which is in the
6 interest of justice and which is not inconsistent with the provisions of
7 this section.
8 b. Compromise claims arising under this section.
9 c. Direct the disposition by the State of all property ordered forfeited
10 under this section by public sale or any other commercially feasible
11 means, making due provision for the rights of innocent persons.
12 d. Take appropriate measures necessary to safeguard and maintain
13 property ordered forfeited under this section pending its disposition.
14 e. Pay from the net proceeds all liens or security interests, according to
15 their priorities, which are established by intervention or otherwise at
16 the hearing provided in this subsection, or in other proceeding
17 brought for said purpose as being bona fide security interests. The
18 balance of the proceeds are to be paid to the proper officer of the
19 county who receives fines and forfeitures to be used for the school
20 fund of the county.
21 (6) Applicability of civil forfeiture provisions. – Except to the extent that they
22 are inconsistent with the provisions of this subsection, the other provisions
23 of this section shall apply to a forfeiture under this subsection.
24 (7) Bar on intervention. – Except as provided in subdivision (8) of this
25 subsection, no party claiming an interest in property subject to forfeiture
26 under this section may do either of the following:
27 a. Intervene in a trial or appeal of a criminal case involving the
28 forfeiture of such property under this section.
29 b. Commence an action at law or equity against the State concerning
30 the validity of the party's alleged interest in the property subsequent
31 to the filing of an indictment or information alleging that the property
32 is subject to forfeiture under this section.
33 (8) Third-party interests; petitions and hearing. – The following procedures
34 apply to third-party interests in forfeited real property:
35 a. Following the entry of an order of forfeiture under this section, the
36 State shall publish notice of the order and of its intent to dispose of
37 the property with a description thereof, in some newspaper published
38 in the city or county where taken or, if there be no newspaper
39 published in such city or county, in a newspaper having circulation in
40 the county, once a week for two weeks and by handbills posted in
41 three public places near the place of seizure. The State may also to
42 the extent practicable provide direct written notice to any person
43 known to have alleged an interest in the property that is the subject of
44 the order of forfeiture as a substitute for published notice as to those
45 persons so notified.
46 b. Any person, other than the defendant, asserting a legal interest in
47 property which has been ordered forfeited to the State pursuant to
48 this section may, within 30 days of the final publication of notice or
49 the person's receipt of notice under sub-subdivision a. of this
50 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.** Article 26 of Chapter 15A of the General Statutes is amended by
47 adding a new section to read:

48 **"§ 15A-534.7. Bail; controlled substances at a place of business.**

49 (a) For the purposes of the section, a "place of business" is any location where a
50 member of the general public may purchase, lease, or utilize goods, services, or other things of
51 value, and whose owner or other person has been issued a privilege license or some other

1 indication from the State or a local governmental entity that authorizes or acknowledges that
2 business or commerce with the general public is conducted at that location.

3 (b) In all cases in which the defendant is charged with any violation of
4 G.S. 90-95(a)(1), in determining bond and other conditions of release, the magistrate, judge, or
5 court shall consider any evidence that the defendant is the owner or person who has operational
6 control of a place of business, and that the controlled substance which is the basis for the
7 charge was located at the place of business. A rebuttable presumption that no conditions of
8 release on bond would assure the safety of the community or any person therein shall arise if
9 the State shows either of the following:

10 (1) The defendant was arrested for a previous violation of G.S. 90-95(a)(1), the
11 controlled substance which was the basis for the previous charge was located
12 at a place of business owned by or under the operational control of the
13 defendant, and the defendant had been released on bail for the previous
14 arrest at the time of the arrest for the current charge.

15 (2) The defendant has a prior conviction for a violation for G.S. 90-95(a)(1), and
16 the controlled substance which was the basis of the prior conviction was
17 located at a place of business owned by or under the operational control of
18 the defendant."

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