

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 937

AMENDMENT NO. A3
(to be filled in by
Principal Clerk)

H937-ASA-38 [v.2]

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Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date _____, 2013

Senator Goolsby

1 moves to amend the bill on page 2, lines 5-6
2 by rewriting those lines to read:

3 "TO MAKE THE DEFINITION OF QUALIFIED RETIRED LAW ENFORCEMENT
4 OFFICER CONSISTENT WITH FEDERAL LAW; AND TO PROVIDE THAT A PERSON
5 CONVICTED OF A SECOND FELONY INVOLVING THE DISPLAY OR USE OF A
6 FIREARM MAY BE INDICTED AS AN ARMED HABITUAL FELON AND SENTENCED
7 TO A MINIMUM OF TEN YEARS.;

8
9 And on page 12, lines 50-51
10 By rewriting those lines to read:

11 "SECTION 26. Chapter 14 of the General Statutes is amended by adding a new
12 article to read:

13 'Article 3D.

14 'Armed Habitual Felon.

15 '§ 14-7.35. Definitions.

16 The following definitions apply in this Article:

- 17 (1) "Convicted." – The person has been adjudged guilty of or has entered a plea
18 of guilty or no contest to the firearm-related felony.
- 19 (2) "Firearm-related felony." – Any felony committed by a person in which the
20 person used or displayed a firearm while committing the felony.
- 21 (3) "Status offender." – A person who is an armed habitual felon as described in
22 G.S. 14-7.36.

23 '§ 14-7.36. Armed habitual felon.

24 Any person who has been convicted of or pled guilty to one or more prior firearm-related
25 felony offenses in any federal court or state court in the United States, or combination thereof,
26 is guilty of the status offense of armed habitual felon and may be charged with that status
27 offense pursuant to this Article.

28 This Article does not apply to a second firearm-related felony unless it is committed after
29 the conviction of a firearm-related felony in which evidence of the person's use, display, or
30 threatened use or display of a firearm was needed to prove an element of the felony or was
31 needed to establish the requirement for an enhanced or aggravated sentence. For purposes of
32 this Article, firearm-related felonies committed before the person is 18 years of age shall not



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1 constitute more than one firearm-related felony. Any firearm-related felony to which a pardon
2 has been extended shall not, for the purposes of this Article, constitute a firearm-related felony.

3 **§ 14-7.37. Punishment.**

4 When any person is charged with a firearm-related felony and is also charged with being a
5 status offender, the person must, upon conviction, be sentenced and punished as a status
6 offender as provided by this Article.

7 **§ 14-7.38. Charge of status offense as an armed habitual felon.**

8 (a) The district attorney, in the district attorney's discretion, may charge a person as a
9 status offender pursuant to this Article. To sustain a conviction of a person as a status offender,
10 the person must be charged separately for the principal firearm-related felony and for the status
11 offense of armed habitual felon. The indictment charging the defendant as a status offender
12 shall be separate from the indictment charging the person with the principal firearm-related
13 felony.

14 (b) An indictment that charges a person with being a status offender must set forth all of
15 the following information regarding the prior firearm-related felony:

16 (1) The date the offense was committed.

17 (2) The name of the state or other sovereign against whom the offense was
18 committed.

19 (3) The dates that the plea of guilty was entered into or conviction returned in
20 the offense.

21 (4) The identity of the court in which the plea or conviction took place.

22 (c) No defendant charged with being a status offender in a bill of indictment shall be
23 required to go to trial on the charge within 20 days of the finding of a true bill by the grand
24 jury; provided, the defendant may waive this 20-day period.

25 **§ 14-7.39. Evidence of prior convictions of firearm-related felonies.**

26 In all cases in which a person is charged under the provisions of this Article with being a
27 status offender, the record of prior conviction of the firearm-related felony shall be admissible
28 in evidence, but only for the purpose of proving that the person has been convicted of a former
29 firearm-related felony. A prior conviction may be proved by stipulation of the parties or by the
30 original or a certified copy of the court record of the prior conviction. The original or certified
31 copy of the court record, bearing the same name as that by which the defendant is charged,
32 shall be prima facie evidence that the defendant named therein is the same as the defendant
33 before the court and shall be prima facie evidence of the facts set out therein.

34 **§ 14-7.40. Verdict and judgment.**

35 (a) When an indictment charges a person with a firearm-related felony as provided by
36 this Article and an indictment also charges that the person is a status offender, the defendant
37 shall be tried for the principal firearm-related felony as provided by law. The indictment that
38 the person is a status offender shall not be revealed to the jury unless the jury shall find that the
39 defendant is guilty of the principal firearm-related felony with which the defendant is charged.

40 (b) If the jury finds the defendant guilty of the principal firearm-related felony, and it is
41 found as provided in this section that: (i) the person committed the felony by using, displaying,
42 or threatening the use or display of a firearm or deadly weapon and (ii) the person actually
43 possessed the firearm or deadly weapon about his or her person, the bill of indictment charging

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1 the defendant as a status offender may be presented to the same jury. Except that the same jury
2 may be used, the proceedings shall be as if the issue of status offender were a principal charge.

3 (c) If the jury finds that the defendant is a status offender, the trial judge shall enter
4 judgment according to the provisions of this Article. If the jury finds that the defendant is not a
5 status offender, the trial judge shall pronounce judgment on the principal firearm-related felony
6 offense as provided by law.

7 **'§ 14-7.41. Sentencing of armed habitual felon.**

8 (a) A person who is convicted of a firearm-related felony and is also convicted of the
9 status offense must, upon conviction or plea of guilty under indictment as provided in this
10 Article, be sentenced as a Class C felon (except where the felon has been sentenced as a Class
11 A, B1, or B2 felon). However, in no case shall the person receive a minimum term of
12 imprisonment of less than 120 months. The court may not suspend the sentence and may not
13 place the person sentenced on probation.

14 (b) In determining the prior record level, any conviction used to establish a person's
15 status as an armed habitual felon shall not be used. Sentences imposed under this Article shall
16 run consecutively with and shall commence at the expiration of any sentence being served by
17 the person sentenced under this section.

18 (c) A conviction as a status offender under this Article shall not constitute commission
19 of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General
20 Statutes.

21 (d) A sentence imposed under this Article may not be enhanced pursuant to G.S. 15A-
22 1340.16A."

23 **SECTION 27.** Article 86 Chapter 15A of the General Statutes is amended by
24 adding a new section to read:

25 **'§ 15A-1382.2. Sentencing court to include in judgment whether firearm was used.**

26 When a person is found guilty of a felony offense, the presiding judge shall determine
27 whether the defendant used or displayed a firearm while committing the felony. If the judge
28 determines that the defendant used or displayed a firearm while committing the felony, the
29 sentencing court shall include that fact when entering the judgment that imposes the sentence
30 for the felony conviction.

31 **SECTION 28.** Sections 1 through 6, 14 through 18, 21, 23, 25, and 26 of this act
32 become effective October 1, 2013, and apply to offenses committed on or after that date.
33 Section 27 of this act becomes effective October 1, 2013, and applies to any judgment entered
34 for a felony conviction on or after that date."

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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