

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 259

Judiciary I/Constitution Committee Substitute Adopted 3/29/95

Short Title: Civil Damages for Certain Crimes.

(Public)

Sponsors:

Referred to:

February 27, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL LIABILITY FOR LARCENY, SHOPLIFTING, EMBEZZLEMENT, AND OBTAINING PROPERTY BY FALSE PRETENSE AND TO PROTECT MERCHANTS AND PEACE OFFICERS FROM CIVIL LIABILITY FOR DETENTION OR ARREST OF PERSONS ACCUSED OF LARCENY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-538.2 reads as rewritten:

"§ 1-538.2. Civil liability for ~~shoplifting and larceny, shoplifting, theft by employee.~~ employee, embezzlement, and obtaining property by false pretense.

(a) Any person, other than an unemancipated minor, who commits an act that is punishable under ~~G.S. 14-72.1 or G.S. 14-72~~ G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100 is liable for civil damages to the owner of the property. In any action brought by the owner of the property he is entitled to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the theft or embezzlement or fraud of an employee. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable attorneys fees. ~~If damages are assessed against the defendant, in favor of the plaintiff, the amount established for actual or consequential~~

1 ~~damages shall be trebled.~~ The total of ~~all consequential~~ damages awarded to a plaintiff  
2 against a defendant ~~in an action~~ under this section shall not be less than two hundred  
3 dollars (\$200.00) and shall not exceed one thousand dollars ~~(\$1,000).~~ ~~(\$1,000), except an~~  
4 ~~act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this~~  
5 ~~section.~~

6 (b) The parent or legal guardian, having the care, custody and control of an  
7 unemancipated minor who commits an act punishable under ~~G.S. 14-72.1 or G.S. 14-72,~~  
8 ~~G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100,~~ is civilly liable to the owner of the property  
9 obtained by the act if such parent or legal guardian knew or should have known of the  
10 propensity of the child to commit such an act; and had the opportunity and ability to  
11 control the child, and made no reasonable effort to correct or restrain the child. In an  
12 action brought against the parent or legal guardian by the owner, the owner is entitled to  
13 recover the amounts specified in subsection (a) except punitive damages. The total  
14 consequential damages awarded to a plaintiff against the parent or legal guardian shall  
15 not be less than two hundred dollars (\$200.00) and shall not exceed one thousand dollars  
16 (\$1,000).

17 (c) ~~A person may not be found liable under this section unless a sign was~~  
18 ~~conspicuously displayed in the place of business at the time the act alleged in the action~~  
19 ~~occurred stating that civil liability for shoplifting and for theft by an employee is~~  
20 ~~authorized under this section.~~ An action may be brought under this section regardless of  
21 whether a criminal action is brought or a criminal conviction is obtained for the act  
22 alleged in the civil action.

23 (c1) For the purposes of this section, consequential damages shall include, but shall  
24 not be limited to:

25 (1) The salary paid to any employee for investigation, reporting, testifying,  
26 or any other time related to the investigation or prosecution for any  
27 violation under subsection (a) of this section; and

28 (2) Any costs, such as mileage, postage, stationery, or telephone expenses  
29 that were incurred as a result of the violation.

30 (c2) The owner of the property shall seek payment for damages under subsections  
31 (a) and (b) of this section prior to filing a civil action, by sending the violator a demand  
32 letter substantially similar to the following:

33 'Our records show that on (date), you unlawfully took possession of  
34 property from (store name/owner of the property), located in (city,  
35 state), without the consent of (store name/owner of the property),  
36 without paying for the property, and with the intent of converting the  
37 property to your own use. In accordance with G.S. 1-538.2, we are  
38 authorized to demand that you pay damages of two hundred dollars  
39 (\$200.00).

40 In the event you fail to comply with our demand for two hundred  
41 dollars (\$200.00) within 15 days from the date of your receipt of the  
42 notice, you may be held civilly liable for an amount not less than two  
43 hundred dollars (\$200.00) and not more than one thousand dollars

1           (\$1,000) in a civil action against you to recover the penalties and  
2           damages authorized by law, which include court costs and attorneys'  
3           fees. If you pay the two hundred dollars (\$200.00), (store name/owner  
4           of the property) will have no further civil remedy against you arising  
5           from the events occurring on (date).

6           If you are the parent or legal guardian of an unemancipated minor  
7           who unlawfully took possession of property as set out above, you can be  
8           held liable if you knew or should have known of the propensity of the  
9           child to commit the act complained of, and you had the opportunity and  
10           ability to control the child and you made no reasonable effort to correct  
11           or restrain the child.

12           If you believe you have received this notice in error, please contact  
13           (name) immediately.

14           **YOU HAVE A RIGHT TO CONTEST YOUR LIABILITY IN**  
15           **COURT.'**

16           (c3) If the recipient of a notice pursuant to subsection (c2) of this section pays the  
17           demand two hundred dollars (\$200.00) within 15 days of the recipient's receipt of the  
18           notice, the merchant shall have no further civil remedy against that violator for the  
19           incident described in the notice.

20           (d) Nothing contained in this act shall prohibit recovery upon any other theory in  
21           the law."

22           Sec. 2. G.S. 14-72 is amended by adding the following subsection:

23           "(d) Where the larceny or receiving or possession of stolen goods as described in  
24           subsection (a) of this section involves the merchandise of any store, a merchant, a  
25           merchant's agent, a merchant's employee, or a peace officer who detains or causes the  
26           arrest of any person shall not be held civilly liable for detention, malicious prosecution,  
27           false imprisonment, or false arrest of the person detained or arrested, when such detention  
28           is in a reasonable manner for a reasonable length of time, and, if in detaining or in  
29           causing the arrest of such person, the merchant, the merchant's agent, the merchant's  
30           employee, or the peace officer had, at the time of the detention or arrest, probable cause  
31           to believe that the person committed an offense under subsection (a) of this section. If  
32           the person being detained by the merchant, the merchant's agent, or the merchant's  
33           employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the  
34           merchant's employee, shall call or notify, or make a reasonable effort to call or notify the  
35           parent or guardian of the minor, during the period of detention. A merchant, a merchant's  
36           agent, or a merchant's employee, who makes a reasonable effort to call or notify the  
37           parent or guardian of the minor shall not be held civilly liable for failing to notify the  
38           parent or guardian of the minor."

39           Sec. 3. This act becomes effective December 1, 1995, and applies to acts  
40           committed on or after that date.