

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 259

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

Judiciary I/Constitution Committee Substitute No. 2 Adopted 4/18/95

House Committee Substitute Favorable 5/25/95

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 OR SHOPLIFTING WHILE ON STORE PREMISES.

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

1 above, the owner of the property is entitled to recover any consequential damages, and
2 punitive damages, together with reasonable attorneys fees. ~~If damages are assessed against~~
3 ~~the defendant, in favor of the plaintiff, the amount established for actual or consequential~~
4 ~~damages shall be trebled.~~—The total of all compensatory and consequential damages
5 awarded to a plaintiff against a defendant in an action under this section shall not be less
6 than one hundred fifty dollars (\$150.00) and shall not exceed one thousand dollars
7 (\$1,000).—(\$1,000), except an act punishable under G.S. 14-74 or G.S. 14-90 shall have no
8 maximum limit under this section.

9 (b) The parent or legal guardian, having the care, custody and control of an
10 unemancipated minor who commits an act punishable under ~~G.S. 14-72.1 or G.S. 14-72,~~
11 G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100, is civilly liable to the owner of the property
12 obtained by the act if such parent or legal guardian knew or should have known of the
13 propensity of the child to commit such an act; and had the opportunity and ability to
14 control the child, and made no reasonable effort to correct or restrain the child. In an
15 action brought against the parent or legal guardian by the owner, the owner is entitled to
16 recover the amounts specified in subsection (a) except punitive damages. The total
17 compensatory and consequential damages awarded to a plaintiff against the parent or
18 legal guardian shall not be less than one hundred fifty dollars (\$150.00) and shall not
19 exceed one thousand dollars (\$1,000).

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

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

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

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

33 (c2) The owner of the property may seek payment for damages under subsections
34 (a) and (b) of this section prior to filing a civil action, by sending the violator a demand
35 letter. If such a letter is sent, it shall be substantially similar to the following:

36 'Our records show that on (date), you unlawfully took possession of
37 property from (store name/owner of the property), located in (city,
38 state), without the consent of (store name/owner of the property),
39 without paying for the property, and with the intent of converting the
40 property to your own use. In accordance with G.S. 1-538.2, we are
41 authorized to demand that you pay damages of one hundred fifty dollars
42 (\$150.00).

1 In the event you fail to comply with our demand for one hundred
2 fifty dollars (\$150.00) within 15 days from the date of your receipt of
3 the notice, you may be held civilly liable for an amount not less than
4 one hundred fifty dollars (\$150.00) and not more than one thousand
5 dollars (\$1,000) in a civil action against you to recover the penalties and
6 damages authorized by law, which include court costs and attorneys'
7 fees. If you pay the one hundred fifty dollars (\$150.00), (store
8 name/owner of the property) will have no further civil remedy against
9 you arising from the events occurring on (date).

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

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

18 **YOU HAVE A RIGHT TO CONTEST YOUR LIABILITY IN**
19 **COURT.'**

20 (c3) The owner of the property sending the demand letter required by this section
21 shall have qualified privilege from any civil liability resulting therefrom provided that
22 there is no excessive publication and that the owner acted in good faith and without
23 malice.

24 (c4) If the recipient of a notice pursuant to subsection (c2) of this section pays the
25 demand one hundred fifty dollars (\$150.00) within 15 days of the recipient's receipt of
26 the notice, the owner of the property shall have no further civil remedy against that
27 violator for the incident described in the notice.

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

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

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

1 minor, during the period of detention. A merchant, a merchant's agent, or a merchant's
2 employee, who makes a reasonable effort to call or notify the parent or guardian of the
3 minor shall not be held civilly liable for failing to notify the parent or guardian of the
4 minor."

5 Sec. 3. G.S. 14-72.1(c) reads as rewritten:

6 "(c) A merchant, or the merchant's agent or employee, or a peace officer
7 who detains or causes the arrest of any person shall not be held civilly liable for
8 detention, malicious prosecution, false imprisonment, or false arrest of the person
9 detained or arrested, where such detention is upon the premises of the store or in a
10 reasonable proximity thereto, is in a reasonable manner for a reasonable length of time,
11 and, if in detaining or in causing the arrest of such person, the merchant, or the
12 merchant's agent or employee, or the peace officer had at the time of the detention or
13 arrest probable cause to believe that the person committed the offense created by this
14 section. If the person being detained by the merchant, or the merchant's agent or
15 employee, is a minor under the age of 18 years, the merchant or the merchant's agent or
16 employee, shall call or notify, or make a reasonable effort to call or notify the parent or
17 guardian of the minor, during the period of detention. A merchant, or the merchant's
18 agent or employee, who makes a reasonable effort to call or notify the parent or guardian
19 of the minor shall not be held civilly liable for failing to notify the parent or guardian of
20 the minor."

21 Sec. 4. This act becomes effective December 1, 1995, and applies to acts
22 committed on or after that date.