

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 798

Short Title: No Profit from Crime.

(Public)

Sponsors: Representatives Eddins; Davis, Hilton, Cox, Capps, and Shubert.

Referred to: Judiciary I.

March 26, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE CRIME VICTIMS WITH A CAUSE OF ACTION TO
3 RECOVER PROFITS RECEIVED AS A RESULT OF THE CRIMES
4 COMMITTED AGAINST THEM.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 15B of the General Statutes is amended by adding a
7 new section to read:

8 "**§ 15B-26 Profit received as a result of commission of a crime.**

9 (a) The General Assembly finds that the State has a compelling interest in:

10 (1) Ensuring that persons convicted of crimes do not profit from those
11 crimes, and that victims of crime are compensated by those who have
12 harmed them; and

13 (2) Protecting crime victims and their families from the additional grief
14 and suffering that may result from renewed publicity about an
15 offender's crime or the marketing or sale of memorabilia related to the
16 crime.

17 The General Assembly further finds that these compelling interests outweigh any
18 interest of the offender and that person's representatives may have in obtaining property
19 or otherwise profiting as a result of having committed a crime. The General Assembly
20 also finds that these compelling interests outweigh a third party's right to realize profits
21 from the sale of crime memorabilia, to the extent that those profits would not have been
22 realized were it not for the commission of the crime.

23 (b) Definitions. – As used in this section:

24 (1) 'Convicted' includes persons convicted by entry of a plea of guilty or
25 no contest, persons convicted after trial, and persons found not guilty
26 by reason of insanity.

27 (2) 'Eligible person' includes any of the following persons:

- 1 a. A victim of the particular crime in question as defined in G.S.
2 15B-2(13);
3 b. A surviving spouse, parent, or child of a deceased victim of the
4 crime; or
5 c. Any other person dependent for the person's principal support
6 upon a deceased victim of the crime.

7 However, 'eligible person' does not include the offender who
8 committed the criminally injurious conduct or an accomplice to that
9 offender.

10 (3) 'Profit from a crime' includes:

- 11 a. Any property obtained through, or income generated from, the
12 commission of a crime for which the offender was convicted;
13 b. Any property obtained by, or income generated from, the sale,
14 conversion, or exchange of proceeds of a crime for which the
15 offender was convicted, including any gain realized by that sale,
16 conversion, or exchange; and
17 c. Any property that the offender obtained, or income generated,
18 as a result of the offender having committed the crime for
19 which the offender was convicted, including any assets obtained
20 through the use of unique knowledge obtained during the
21 commission of, or in preparation for, the commission of the
22 crime, as well as any property obtained by, or income generated
23 from, the sale, conversion, or exchange of that property and any
24 gain realized by that sale, conversion, or exchange.

25 (4) 'Profiteer of the crime' means any person who sells or transfers for
26 profit any memorabilia or other property or thing of the offender, the
27 value of which is enhanced by the notoriety gained from the
28 commission of the crime for which the offender was convicted.
29 'Profiteer of the crime' shall not include a media entity reporting on the
30 offender or on the sale of memorabilia or other property of the
31 offender, nor shall it include a person selling books, magazines,
32 newspapers, films, or sound recordings, or giving interviews or
33 making live presentations of any type, in the exercise of that person's
34 rights under the First Amendment to the United States Constitution.
35 'Profiteer of the crime' shall also not include a person selling or
36 transferring any other expressive work protected by the First
37 Amendment unless the sale or transfer is primarily for a commercial or
38 speculative purpose.

39 (c) Notice of Profit From Crime. – If a person has been convicted of a crime, any
40 person who knowingly contracts for, pays, or agrees to pay any profit from a crime to
41 that person shall give written notice to the Commission of the payment or obligation to
42 pay within 30 days after discovering that the payment or intended payment is a profit
43 from a crime, and submit a copy of any contract or other agreement giving rise to the
44 profit from crime. The Commission, upon receipt of notice of a contract, an agreement

1 to pay, or payment of profit from a crime, shall notify all known eligible persons of the
2 existence of the profit.

3 (d) Constructive Trust; Right of Action. – All profits from crime shall be subject to a
4 constructive trust for the benefit of eligible persons. An eligible person may bring an
5 action to recover those profits from a person convicted of a crime, the legal
6 representative of that convicted person, a profiteer of the crime, or a person to whom
7 profits of crime have been transferred, within three years of the discovery of any profit
8 from the crime. The court may award an eligible person bringing such an action a
9 judgment of an amount up to the total value of the profit from the crime. If any profit
10 from crime remains after the payment of all claims made under this section, the
11 Commission may bring an action within two years to recover any compensation awards
12 made by the Commission as a result of the crime in question.

13 (e) Notice of Action. – Upon filing an action under subsection (d) of this section, an
14 eligible person shall give notice to the Commission of the filing by delivering a copy of
15 the complaint to the Commission. The eligible person may also give notice to the
16 Commission prior to filing the action in order to allow the Commission to apply for any
17 appropriate remedies that are otherwise authorized to be invoked prior to
18 commencement of an action.

19 (f) Responsibilities of the Commission. – Upon receipt of a copy of a complaint, the
20 Commission shall immediately take action as necessary to:

- 21 (1) Notify all other known eligible persons of the alleged existence of
22 profit from a crime by certified mail, return receipt requested, where
23 the eligible persons' names and addresses are known to the
24 Commission;
- 25 (2) Publish, at least once a year for three years from the date it is initially
26 notified by an eligible person under subsection (e) of this section, a
27 legal notice in newspapers of general circulation in the county in
28 which the crime was committed and in counties contiguous to that
29 county advising any eligible person of the existence of profit from a
30 crime. The Commission may, in its discretion, provide for additional
31 notice as it deems necessary; and
- 32 (3) Avoid the wasting of the assets identified in the complaint as the
33 newly discovered profit from a crime in any manner consistent with
34 subsection (g) of this section.

35 (g) Other Remedies. – The Commission, acting on behalf of all eligible persons,
36 shall have the right to apply for any and all remedies that are also otherwise available to
37 an eligible person bringing an action under subsection (d) of this section, such as
38 attachment, injunction, and receivership. On a motion for a remedy, the moving party
39 shall state whether any other remedy has previously been sought in the same action
40 against the same defendant. The court may require the moving party to elect between
41 those remedies to which it would otherwise be entitled.

42 (h) Evasive Action Void. – Any action taken by a person convicted of a crime,
43 whether by way of execution of a power of attorney, creation of corporate entities, or

1 otherwise, to defeat the purpose of this section shall be void as against the public policy
2 of this State.

3 (i) Penalties. – Any person who willfully fails to do any of the following is subject to
4 a civil penalty of not less than ten thousand dollars (\$10,000) for each offense and not
5 more than an amount equal to three times the contract amount:

6 (1) Give notice to the Commission of a profit from crime within 30 days
7 as required by subsection (c) of this section;

8 (2) Submit a copy of the contract or other agreement described in
9 subsection (c) of this section; or

10 (3) Pay over to the Commission any funds or other consideration as
11 required by this section.

12 If two or more persons are subject to the penalties provided in this section, the
13 persons shall be jointly and severally liable for the payment of the penalty imposed.

14 After providing notice and opportunity to be heard, the Commission may by order
15 assess the penalties prescribed by this subsection. If the penalties are not paid within 30
16 days from the date of the order, any penalty assessed under this section shall bear
17 interest at the rate of one percent (1%) per month, compounded monthly. An action to
18 recover a civil penalty assessed under this section may be brought by the Commission
19 within six years after the cause of action accrues.

20 The clear proceeds of penalties assessed under this subsection shall be remitted to
21 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

22 **SECTION 2.** This act is effective when it becomes law and applies to profits
23 from crime realized on or after that date.