

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 937

Short Title: Civil Damages for Certain Crimes.

(Public)

Sponsors: Senator Soles.

Referred to: Judiciary II.

April 21, 1993

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL LIABILITY FOR LARCENY, SHOPLIFTING,
EMBEZZLEMENT, AND OBTAINING PROPERTY BY FALSE PRETENSE.

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

(b) The parent or legal guardian, having the care, custody and control of an unemancipated minor who commits an act punishable under ~~G.S. 14-72.1 or G.S. 14-72,~~

1 G.S. 14-72, 14-72.1, 114-74, 14-90, or 14-100, is civilly liable to the owner of the
2 property obtained by the act if such parent or legal guardian knew or should have
3 known of the propensity of the child to commit such an act; and had the opportunity and
4 ability to control the child, and made no reasonable effort to correct or restrain the child.
5 In an action brought against the parent or legal guardian by the owner, the owner is
6 entitled to recover the amounts specified in subsection (a) except punitive damages.
7 The total consequential damages awarded to a plaintiff against the parent or legal
8 guardian shall not be less than two hundred dollars (\$200.00) and shall not exceed one
9 thousand dollars (\$1,000).

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

16 (c1) If the owner of the property, the owner's agent, and the owner's employees act
17 in a reasonable manner, they shall be immune from countersuit. A merchant, a
18 merchant's agent, a merchant's employee, or a peace officer who detains or causes the
19 arrest of any person shall not be held civilly liable for detention, malicious prosecution,
20 false imprisonment, or false arrest of the person detained or arrested, when such
21 detention is in a reasonable manner for a reasonable length of time and, if in detaining
22 or in causing the arrest of such person, the merchant, the merchant's agent, the
23 merchant's employee, or the peace officer had at the time of the detention or arrest
24 probable cause to believe that the person committed an offense under this section.

25 (c2) For the purposes of this section, consequential damages shall include but shall
26 not be limited to:

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

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

32 (c3) The owner of the property may seek payment for damages under subsections
33 (a) and (b) of this section prior to filing a civil action, by sending the violator a demand
34 letter substantially similar to the following:

35 'Our records show that on (date), you unlawfully took possession of
36 merchandise from (store name), located in (city, state) without the
37 consent of (store name), without paying for the merchandise, and with
38 the intent of converting the merchandise to your own use.

39 In accordance with North Carolina General Statute 1-538.2, we are
40 authorized to demand that you pay damages of two hundred dollars
41 (\$200.00).

42 In the event you fail to comply with our demand for two hundred
43 dollars (\$200.00) within 15 days from the date of the notice, you may
44 be held civilly liable for up to one thousand dollars (\$1,000) in a civil

1 action against you, to recover the penalties and damages authorized by
2 law, which include court costs and attorney fees.'

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

5 Sec. 2. This act becomes effective January 1, 1994, and applies to any
6 violations under this act committed on or after that date.