

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 937
Judiciary II Committee Substitute Adopted 7/16/93

Short Title: Civil Damages for Certain Crimes.

(Public)

Sponsors:

Referred to:

April 21, 1993

A BILL TO BE ENTITLED

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

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 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). except an act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this section.

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

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

18 (c1) A merchant, a merchant's agent, a merchant's employee, or a peace officer
19 who detains or causes the arrest of any person shall not be held civilly liable for
20 detention, malicious prosecution, false imprisonment, or false arrest of the person
21 detained or arrested, when such detention is in a reasonable manner for a reasonable
22 length of time, and, if in detaining or in causing the arrest of such person, the merchant,
23 the merchant's agent, the merchant's employee, or the peace officer had, at the time of
24 the detention or arrest, probable cause to believe that the person committed an offense
25 under this section. If the person being detained by the merchant, the merchant's agent,
26 or the merchant's employee, is a minor 16 years of age or younger, the merchant, the
27 merchant's agent, or the merchant's employee, shall call or notify, or make a reasonable
28 effort to call or notify the parent or guardian of the minor, during the period of
29 detention.

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

- 32 (1) The salary paid to any employee for investigation, reporting,
33 testifying, or any other time related to the investigation or prosecution
34 for any violation under subsection (a) of this section; and
35 (2) Any costs, such as mileage, postage, stationery, or telephone expenses
36 that were incurred as a result of the violation.

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

40 'Our records show that on (date), you unlawfully took possession of
41 merchandise from (store name), located in (city, state) without the
42 consent of (store name), without paying for the merchandise, and with
43 the intent of converting the merchandise to your own use. In
44 accordance with North Carolina General Statute 1-538.2, we are

1 authorized to demand that you pay damages of two hundred dollars
2 (\$200.00).

3 In the event you fail to comply with our demand for two hundred
4 dollars (\$200.00) within 15 days from the date of your receipt of the
5 notice, you may be held civilly liable for up to one thousand dollars
6 (\$1,000) in a civil action against you to recover the penalties and
7 damages authorized by law, which include court costs and attorneys'
8 fees. If you pay the two hundred dollars (\$200.00), (store name) will
9 have no further civil remedy against you arising from the events
10 occurring on (date). If you believe you have received this notice in
11 error, please contact (name) immediately. You have a right to contest
12 your liability in court.'

13 (c4) If the recipient of a notice pursuant to subsection (c3) of this section pays the
14 demanded two hundred dollars (\$200.00) within 15 days of the recipient's receipt of the
15 notice, the merchant shall have no further civil remedy against that violator for the
16 incident described in the notice.

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

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