

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 1519

Short Title: Crime Victim Financial Recovery Assist. Act. (Public)

Sponsors: Representatives Eddins, Holliman (Primary Sponsors); B. Allen, Gillespie, Harrell, Justus, Pate, A. Williams, K. Williams, Hilton, McLawhorn, and Stiller.

Referred to: Judiciary IV.

May 19, 2004

A BILL TO BE ENTITLED

1 AN ACT TO PREVENT CRIMINALS FROM PROFITING FROM THEIR CRIMES
2 AND TO BETTER ENABLE CRIME VICTIMS TO SATISFY RESTITUTION
3 ORDERS AND CIVIL JUDGMENTS ENTERED AGAINST THEIR
4 OFFENDERS FROM THE OFFENDERS' ASSETS, WHICH MAY INCLUDE
5 PROFIT FROM CRIME.
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7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Sections 1 through 25 of Chapter 15B of the General Statutes
9 are redesignated as Article 1 of Chapter 15B. The Revisor of Statutes is authorized to
10 make changes in the newly designated Article 1 that will reflect the results of the
11 recodification.

12 **SECTION 2.** Chapter 15B of the General Statutes is amended by adding a
13 new Article to read:

"Article 2.

"The Crime Victim Financial Recovery Assistance Act.

14 **§ 15B-30. Declaration of policy and purpose.**

15 The General Assembly of North Carolina hereby declares as a matter of public
16 policy that:

- 17 (1) No person who commits a crime should thereafter gain monetary profit
18 as the result of committing the crime.
19 (2) Victims of crime have a special relationship to any profit from the
20 crime committed against them, including the personal belongings and
21 memorabilia of a convicted felon whose criminal actions and resulting
22 notoriety enhance the value of those belongings and memorabilia.
23 (3) To the extent profit from crime would not have been realized but for
24 an offender's commission of illegal acts, an offender does not have an
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1 equitable interest in the profit and allowing the offender to retain the
2 profit would result in the offender's unjust enrichment.

3 The General Assembly finds that the State has a compelling interest in ensuring that
4 persons convicted of crimes do not profit from those crimes, and that victims of crime
5 are compensated by those who have harmed them.

6 The General Assembly further finds that crime victims have difficulty satisfying
7 restitution orders or civil judgments entered against their offenders because the victims
8 often lack the expertise and resources to identify or locate assets that an offender may
9 have.

10 In order to carry out this public policy and to satisfy these compelling interests, the
11 General Assembly has enacted the provisions of this Article providing a mechanism by
12 which crime victims are notified of the existence of an offender's assets and are
13 authorized to bring an action to recover those assets.

14 **"§ 15B-31. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) Commission. – The Crime Victims Compensation Commission
17 established under G.S. 15B-3.
- 18 (2) Convicted. – A finding or verdict of guilty by a jury or by entry of a
19 plea of guilty or no contest or a finding of not guilty by reason of
20 insanity.
- 21 (3) Crime memorabilia. – Any tangible property belonging to or that
22 belonged to an offender prior to conviction, the value of which is
23 increased by the notoriety gained from the conviction of a felony.
- 24 (4) Earned income. – Income derived from one's own labor or through
25 active participation in a business, as distinguished from income, for
26 example, from dividends or investments.
- 27 (5) Eligible person. –
28 a. A victim of the crime for which the offender was convicted.
29 b. A surviving spouse, parent, or child of a deceased victim of the
30 crime; or
31 c. Any other person dependent for the person's principal support
32 upon a deceased victim of the crime.

33 However, 'eligible person' does not include the offender or an
34 accomplice to the offender.

- 35 (6) Felony. – An offense defined as a felony by any North Carolina or
36 United States statute that was committed in North Carolina and that
37 resulted in physical or emotional injury, or death, to another person.

- 38 (7) Funds of an offender. – All funds and property received from any
39 source by an offender, excluding child support and earned income,
40 where the offender:

- 41 a. Is an inmate serving a sentence with the Department of
42 Correction or a prisoner confined at a local correctional facility
43 or federal correctional institute, and includes funds that a
44 superintendent, sheriff, or municipal official receives on behalf

1 of an inmate or prisoner and deposits in an inmate account to
2 the credit of the inmate or deposits in a prisoner account to the
3 credit of the prisoner; or

4 b. Is not an inmate or prisoner but who is serving a sentence of
5 probation, conditional discharge, or post-release supervision.

6 (8) Offender. – A person who has been convicted of a felony or that
7 person's legal representative or assignee.

8 (9) Profit from crime. – Any income, assets, or property obtained through
9 or generated from the commission of a crime for which the offender
10 was convicted, including any income, assets, or property generated
11 from the sale of crime memorabilia or obtained through the use of
12 unique knowledge obtained during the commission of, or in
13 preparation for the commission of the crime, as well as any gain from
14 the sale, conversion, or exchange of the income, assets, or property.
15 'Profit from crime' does not include voluntary donations or
16 contributions to an offender used to assist in the appeal of a conviction,
17 provided the donation or contribution is not given in exchange for
18 something of material value.

19 (10) Victim. – Any natural person who suffers physical or emotional injury,
20 or the threat of physical or emotional injury, as the result of the
21 commission of a felony.

22 **"§ 15B-32. Notice of contract or agreement to pay.**

23 (a) Notice to Commission. –

24 (1) Every person, firm, corporation, partnership, association, or other legal
25 entity, or representative of a person, firm, corporation, partnership,
26 association, or entity that knowingly contracts for, pays, or agrees to
27 pay to an offender (i) profit from crime or (ii) funds of an offender
28 where the value or aggregate value of the payment or payments
29 exceeds ten thousand dollars (\$10,000) shall submit to the
30 Commission a copy of the contract or reduce to writing the terms of
31 any oral agreement or obligation to pay as soon as practicable after
32 discovering the payment or intended payment constitutes profit from
33 crime or funds of an offender.

34 (2) Whenever the payment or obligation to pay involves funds of an
35 offender that a superintendent, sheriff, or municipal officer (i) receives
36 or will receive on behalf of an inmate serving a sentence with the
37 Department of Correction or a prisoner confined at a local correctional
38 facility, (ii) deposits or will deposit in an inmate account to the credit
39 of an inmate or prisoner, and (iii) the value of such funds exceeds or
40 will exceed ten thousand dollars (\$10,000), the State or subdivision of
41 the State shall also give written notice to the Commission.

42 (3) Whenever the State or a subdivision of the State makes a payment or
43 has an obligation to pay funds of an offender and the value of such
44 funds exceeds or will exceed ten thousand dollars (\$10,000), the State

1 or subdivision of the State shall also give written notice to the
2 Commission.

3 (4) In all other instances where the payment or obligation to pay involves
4 funds of an offender and the value or aggregate value of the funds
5 exceeds or will exceed ten thousand dollars (\$10,000), the offender
6 who receives or will receive the funds shall give written notice to the
7 Commission.

8 (b) Notice to Eligible Persons. – The Commission shall, upon receipt of a notice
9 of a contract, an agreement to pay, or payment of profit from crime or funds of an
10 offender, notify in writing by certified mail, return receipt requested, all known eligible
11 persons where the eligible persons' names and addresses are known to the Commission.
12 The Commission may, in its discretion, provide for additional notice as it deems
13 necessary.

14 (c) Penalties. – Any person or entity, other than the State, a subdivision of the
15 State, or a person who is a superintendent, sheriff, or municipal official required to give
16 notice pursuant to this section, who willfully fails to comply with subsection (a) of this
17 section is subject to a civil penalty up to the amount of the payment or obligation to pay,
18 plus one thousand dollars (\$1,000) or ten percent (10%) of the payment of obligation to
19 pay, whichever is greater.

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

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

28 **§ 15B-33. Civil action to recover profits or funds; responsibilities of the**
29 **Commission.**

30 (a) Civil Action. – Notwithstanding any inconsistent provision of law with
31 respect to the timely bringing of an action, an eligible person may, within three years of
32 the discovery of any profit from crime or funds of an offender, bring a civil action in a
33 court of competent jurisdiction to recover money damages from an offender.

34 (b) Notice by Eligible Persons. – Upon filing an action under subsection (a) of
35 this section, the eligible person shall give notice to the Commission of the filing by
36 delivering a copy of the summons and complaint to the Commission. The eligible
37 person may also give notice to the Commission prior to filing the action so as to allow
38 the Commission to apply for any appropriate provisional remedies, which are otherwise
39 authorized to be invoked prior to the commencement of an action.

40 (c) Responsibilities of Commission. – Upon receipt of a copy of a summons and
41 complaint, or upon receipt of notice from the eligible person prior to filing an action, the
42 Commission shall immediately take action to:

- 1 (1) Notify all other known eligible persons of the filing of the civil action
2 by certified mail, return receipt requested, where the eligible persons'
3 names and addresses are known to the Commission.
- 4 (2) Publish, at least once every six months for three years from the date of
5 the discovery of the profit from crime or funds of an offender, a legal
6 notice in newspapers of general circulation in the county in which the
7 crime was committed and in counties contiguous to that county
8 advising any eligible person of the existence of profit from crime or
9 funds of an offender. The Commission may, in its discretion, provide
10 for additional notice as it deems necessary.
- 11 (3) Avoid the wasting of the assets identified in the complaint as the profit
12 from crime or funds of an offender in any manner consistent with
13 subsection (d) of this section.

14 (d) Authority to Avoid Wasting of Assets. – The Commission, acting on behalf
15 of all eligible persons, shall have the right to apply for any and all provisional remedies
16 that are also otherwise available to the plaintiff in the civil action brought under
17 subsection (a) of this section, such as attachment, injunction, constructive trust, and
18 receivership. On a motion for a provisional remedy, the moving party shall state
19 whether any other provisional remedy has previously been sought in the same action
20 against the same defendant. The court may require the moving party to elect between
21 those remedies to which it would otherwise be entitled.

22 (e) Enforcement of Judgment. – Notwithstanding any other provision of law to
23 the contrary, a judgment obtained pursuant to this section shall not be subject to
24 execution or enforcement against the first one thousand dollars (\$1,000) deposited in an
25 inmate account to the credit of the inmate or in a prisoner account to the credit of the
26 prisoner. In addition, where the civil action involves funds of an offender and those
27 funds were recovered by the offender pursuant to a judgment obtained in a civil action,
28 a judgment obtained pursuant to this section may not be subject to enforcement or
29 execution against the first ten percent (10%) of any compensatory damages awarded to
30 the offender in a civil action.

31 **"§ 15B-34. Subrogation by the Crime Victims Compensation Fund.**

32 Claims on profit from crime or funds of an offender are subject to subrogation by the
33 Crime Victims Compensation Fund pursuant to G.S. 15B-18.

34 **"§ 15B-35. Conviction overturned or pardon issued.**

35 If profit from crime is subject to a provisional remedy on behalf of eligible persons
36 and the conviction for the criminal offense from which profit from crime is realized is
37 reversed, vacated, or set aside, or if the offender has been granted an unconditional
38 pardon of innocence for the criminal offense, those funds shall be returned to the
39 rightful owner.

40 **"§ 15B-36. Evasive action void.**

41 Any action taken by an offender, whether by way of execution of a power of
42 attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Article
43 shall be void as against the public policy of this State."

1 **SECTION 3.** The provisions of this act are severable. If any provision of
2 this act or its application is held invalid, that invalidity shall not affect other provisions
3 or applications that can be given effect without the invalid provision or application.

4 **SECTION 4.** This act is effective when it becomes law and applies to
5 contracts for profit from crime entered into on or after that date or funds of an offender
6 that have accrued on or after that date.