

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH10232-LL-46 (2/24)

Short Title: No Profit from Crime.

(Public)

Sponsors: Representatives Eddins and Holliman (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

a. A victim of the particular crime in question as defined in G.S. 15B-2(13);

b. A surviving spouse, parent, or child of a deceased victim of the crime; or

1 c. Any other person dependent for the person's principal support
2 upon a deceased victim of the crime.

3 However, 'eligible person' does not include the offender who
4 committed the criminally injurious conduct or an accomplice to that
5 offender.

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

7 a. Any property obtained through, or any income generated from,
8 the commission of a crime for which the offender's was
9 convicted;

10 b. Any property obtained by, or income generated from, the sale,
11 conversion, or exchange of proceeds of a crime for which the
12 offender was convicted, including any gain realized by that sale,
13 conversion, or exchange; and

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

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

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

1 person is a profiteer of a crime, shall notify all known eligible persons of the existence
2 of the profit.

3 (d) Constructive Trust; Right of Action. – All profits from a crime and profits
4 realized by profiteers of a crime shall be subject to a constructive trust for the benefit of
5 eligible persons. A constructive trust established pursuant to this subsection shall
6 continue for a period of five years from the date that profits from a crime or profits by a
7 profiteer of a crime are realized. An eligible person may bring an action:

8 (1) To recover profits from a crime from a person convicted of a crime,
9 the legal representative of that convicted person, or a person to whom
10 profits of a crime have been transferred. If an eligible person brings an
11 action within the five-year trust period, the trust character of the
12 property shall continue until the conclusion of the action. The court
13 may award an eligible person bringing an action pursuant to this
14 subdivision a judgment of an amount no more than the total value of
15 the profit from the crime minus any claims pursuant to subdivisions (1)
16 and (2) of subsection (e) of this section.

17 (2) To recover profits realized from a profiteer of a crime. If an eligible
18 person brings an action within the five-year trust period, the trust
19 character of the property shall continue until the conclusion of the
20 action. The court may award an eligible person bringing an action
21 pursuant to this subdivision a judgment of an amount no more than the
22 total value by which the sale or transfer was enhanced by the notoriety
23 gained from the commission of the offense for which the offender was
24 convicted minus any claims pursuant to subdivisions (1) and (2) of
25 subsection (e) of this section.

26 An action pursuant to this subsection may be brought in the superior court of the
27 county in which the eligible person resides, of the county in which the offender resides,
28 or of the county in which the profits from crime or the profits realized by a profiteer of a
29 crime reside.

30 (e) Priority of Claims. – Notwithstanding any other provision of law, claims on
31 profits from crime and profits realized by profiteers of a crime subject to a constructive
32 trust as provided in subsection (d) of this section shall have the following priorities:

33 (1) A court order of restitution.

34 (2) Subrogation by the Crime Victims Compensation Fund pursuant to
35 G.S. 15B-18.

36 (3) A civil judgment of an eligible party.

37 At the end of the five-year trust period, any profits from a crime or profits realized
38 by a profiteer of a crime that remain in the constructive trust after any claims shall be
39 transferred to the Crime Victims Compensation Fund.

40 (f) Conviction Overturned or Pardon Issued. – If the conviction for the criminal
41 offense from which profits from a crime are realized or profits by a profiteer of a crime
42 are realized is reversed, vacated, or set aside, or if the offender has been granted an
43 unconditional pardon of innocence for the criminal offense, the constructive trust

1 established pursuant to subsection (d) of this section shall be extinguished, and any
2 monies distributed pursuant to this section shall be returned to the rightful owner.

3 (g) Notice of Action. – Upon filing an action under subsection (d) of this section,
4 an eligible person shall give notice to the Commission of the filing by delivering a copy
5 of the complaint to the Commission. The eligible person may also give notice to the
6 Commission prior to filing the action in order to allow the Commission to apply for any
7 appropriate remedies that are otherwise authorized to be invoked prior to
8 commencement of an action.

9 (h) Responsibilities of the Commission. – Upon receipt of a copy of a complaint,
10 the Commission shall immediately take action as necessary to:

11 (1) Notify all other known eligible persons of the alleged existence of
12 profit from a crime or profit realized by a profiteer of a crime by
13 certified mail, return receipt requested, where the eligible persons'
14 names and addresses are known to the Commission;

15 (2) Publish, at least once a year for three years from the date it is initially
16 notified by an eligible person under subsection (g) of this section, a
17 legal notice in newspapers of general circulation in the county in
18 which the crime was committed and in counties contiguous to that
19 county advising any eligible person of the existence of profit from a
20 crime or profit realized by a profiteer of a crime. The Commission
21 may, in its discretion, provide for additional notice as it deems
22 necessary; and

23 (3) Avoid the wasting of the assets identified in the complaint as the
24 newly discovered profit from a crime or profit realized by a profiteer
25 of a crime in any manner consistent with subsection (g) of this section.

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

33 (j) Evasive Action Void. – Any action taken by a person convicted of a crime,
34 whether by way of execution of a power of attorney, creation of corporate entities, or
35 otherwise, to defeat the purpose of this section shall be void as against the public policy
36 of this State.

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

40 (1) Give notice to the Commission of profit from a crime or profit realized
41 by a profiteer of a crime within 30 days as required by subsection (c)
42 of this section; or

43 (2) Submit a copy of the contract or other agreement described in
44 subsection (c) of this section.

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

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

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

11 **SECTION 2.** This act is effective when it becomes law and applies to profits
12 realized on or after that date.