

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 911

Short Title: No Profit from Crime.

(Public)

Sponsors: Representatives Eddins, Holliman (Primary Sponsors); and Gillespie.

Referred to: Judiciary I.

April 8, 2003

1 A BILL TO BE ENTITLED
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 ensuring that persons convicted of crimes do not profit from those crimes, and that
11 victims of crime are compensated by those who have harmed them.

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

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

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

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

23 a. A victim of the particular crime in question as defined in G.S.
24 15B-2(13);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) A court order of restitution.

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

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

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

38 (f) Conviction Overturned or Pardon Issued. – If the conviction for the criminal
39 offense from which profits from a crime are realized or profits by a profiteer of a crime
40 are realized is reversed, vacated, or set aside, or if the offender has been granted an
41 unconditional pardon of innocence for the criminal offense, the constructive trust
42 established pursuant to subsection (d) of this section shall be extinguished, and any
43 monies distributed pursuant to this section shall be returned to the rightful owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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