

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 259

Short Title: Civil Damages for Certain Crimes.

(Public)

Sponsors: Senator Soles.

Referred to: Judiciary I/Constitution

February 27, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL LIABILITY FOR LARCENY, SHOPLIFTING, EMBEZZLEMENT, AND OBTAINING PROPERTY BY FALSE PRETENSE AND TO PROTECT MERCHANTS AND PEACE OFFICERS FROM CIVIL LIABILITY FOR DETENTION OR ARREST OF PERSONS ACCUSED OF LARCENY.

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

1 against a defendant ~~in an action~~ under this section shall not be less than two hundred
2 dollars (\$200.00) and shall not exceed one thousand dollars ~~(\$1,000).~~ (\$1,000), except an
3 act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this
4 section.

5 (b) The parent or legal guardian, having the care, custody and control of an
6 unemancipated minor who commits an act punishable under ~~G.S. 14-72.1 or G.S. 14-72,~~
7 G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100, is civilly liable to the owner of the property
8 obtained by the act if such parent or legal guardian knew or should have known of the
9 propensity of the child to commit such an act; and had the opportunity and ability to
10 control the child, and made no reasonable effort to correct or restrain the child. In an
11 action brought against the parent or legal guardian by the owner, the owner is entitled to
12 recover the amounts specified in subsection (a) except punitive damages. The total
13 consequential damages awarded to a plaintiff against the parent or legal guardian shall
14 not be less than two hundred dollars (\$200.00) and shall not exceed one thousand dollars
15 (\$1,000).

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

22 (c1) For the purposes of this section, consequential damages shall include, but shall
23 not be limited to:

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

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

29 (c2) The owner of the property may seek payment for damages under subsections
30 (a) and (b) of this section prior to filing a civil action, by sending the violator a demand
31 letter substantially similar to the following:

32 'Our records show that on (date), you unlawfully took possession of
33 merchandise from (store name), located in (city, state) without the
34 consent of (store name), without paying for the merchandise, and with
35 the intent of converting the merchandise to your own use. In
36 accordance with North Carolina General Statute 1-538.2, we are
37 authorized to demand that you pay damages of two hundred dollars
38 (\$200.00).

39 In the event you fail to comply with our demand for two hundred
40 dollars (\$200.00) within 15 days from the date of your receipt of the
41 notice, you may be held civilly liable for up to one thousand dollars
42 (\$1,000) in a civil action against you to recover the penalties and
43 damages authorized by law, which include court costs and attorneys'

1 fees. If you pay the two hundred dollars (\$200.00), (store name) will
2 have no further civil remedy against you arising from the events
3 occurring on (date). If you believe you have received this notice in
4 error, please contact (name) immediately. You have a right to contest
5 your liability in court.'

6 (c3) If the recipient of a notice pursuant to subsection (c2) of this section pays the
7 demand of two hundred dollars (\$200.00) within 15 days of the recipient's receipt of the
8 notice, the merchant shall have no further civil remedy against that violator for the
9 incident described in the notice.

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

12 Sec. 2. G.S. 14-72 is amended by adding the following subsection:

13 "(d) Where the larceny or receiving or possession of stolen goods as described in
14 subsection (a) of this section involves the merchandise of any store, a merchant, a
15 merchant's agent, a merchant's employee, or a peace officer who detains or causes the
16 arrest of any person shall not be held civilly liable for detention, malicious prosecution,
17 false imprisonment, or false arrest of the person detained or arrested, when such detention
18 is in a reasonable manner for a reasonable length of time, and, if in detaining or in
19 causing the arrest of such person, the merchant, the merchant's agent, the merchant's
20 employee, or the peace officer had, at the time of the detention or arrest, probable cause
21 to believe that the person committed an offense under subsection (a) of this section. If
22 the person being detained by the merchant, the merchant's agent, or the merchant's
23 employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the
24 merchant's employee, shall call or notify, or make a reasonable effort to call or notify the
25 parent or guardian of the minor, during the period of detention. A merchant, a merchant's
26 agent, or a merchant's employee, who makes a reasonable effort to call or notify the
27 parent or guardian of the minor shall not be held civilly liable for failing to notify the
28 parent or guardian of the minor."

29 Sec. 3. This act becomes effective January 1, 1995, and applies to acts
30 committed on or after that date.