

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 259

Judiciary I/Constitution Committee Substitute Adopted 3/29/95

Judiciary I/Constitution Committee Substitute No. 2 Adopted 4/18/95

Short Title: Civil Damages for Certain Crimes.

(Public)

Sponsors:

Referred to:

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~~

1 ~~the defendant, in favor of the plaintiff, the amount established for actual or consequential~~
2 ~~damages shall be trebled. The total of all consequential damages awarded to a plaintiff~~
3 ~~against a defendant in an action under this section shall not be less than one hundred fifty~~
4 ~~dollars (\$150.00) and shall not exceed one thousand dollars (\$1,000). (\$1,000), except an~~
5 ~~act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this~~
6 ~~section.~~

7 (b) The parent or legal guardian, having the care, custody and control of an
8 unemancipated minor who commits an act punishable under ~~G.S. 14-72.1 or G.S. 14-72,~~
9 ~~G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100,~~ is civilly liable to the owner of the property
10 obtained by the act if such parent or legal guardian knew or should have known of the
11 propensity of the child to commit such an act; and had the opportunity and ability to
12 control the child, and made no reasonable effort to correct or restrain the child. In an
13 action brought against the parent or legal guardian by the owner, the owner is entitled to
14 recover the amounts specified in subsection (a) except punitive damages. The total
15 consequential damages awarded to a plaintiff against the parent or legal guardian shall
16 not be less than one hundred fifty dollars (\$150.00) and shall not exceed one thousand
17 dollars (\$1,000).

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

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

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

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

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

34 'Our records show that on (date), you unlawfully took possession of
35 property from (store name/owner of the property), located in (city,
36 state), without the consent of (store name/owner of the property),
37 without paying for the property, and with the intent of converting the
38 property to your own use. In accordance with G.S. 1-538.2, we are
39 authorized to demand that you pay damages of one hundred fifty dollars
40 (\$150.00).

41 In the event you fail to comply with our demand for one hundred
42 fifty dollars (\$150.00) within 15 days from the date of your receipt of
43 the notice, you may be held civilly liable for an amount not less than

1 one hundred fifty dollars (\$150.00) and not more than one thousand
2 dollars (\$1,000) in a civil action against you to recover the penalties and
3 damages authorized by law, which include court costs and attorneys'
4 fees. If you pay the one hundred fifty dollars (\$150.00), (store
5 name/owner of the property) will have no further civil remedy against
6 you arising from the events occurring on (date).

7 If you are the parent or legal guardian of an unemancipated minor
8 who unlawfully took possession of property as set out above, you can be
9 held liable if you knew or should have known of the propensity of the
10 child to commit the act complained of, and you had the opportunity and
11 ability to control the child and you made no reasonable effort to correct
12 or restrain the child.

13 If you believe you have received this notice in error, please contact
14 (name) immediately.

15 **YOU HAVE A RIGHT TO CONTEST YOUR LIABILITY IN**
16 **COURT.'**

17 (c3) The owner of the property sending the demand letter required by this section
18 shall have qualified privilege from any civil liability resulting therefrom provided that
19 there is no excessive publication and that the owner acted in good faith and without
20 malice.

21 (c4) If the recipient of a notice pursuant to subsection (c2) of this section pays the
22 demand of one hundred fifty dollars (\$150.00) within 15 days of the recipient's receipt of
23 the notice, the owner of the property shall have no further civil remedy against that
24 violator for the incident described in the notice.

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

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

28 "(d) Where the larceny or receiving or possession of stolen goods as described in
29 subsection (a) of this section involves the merchandise of any store, a merchant, a
30 merchant's agent, a merchant's employee, or a peace officer who detains or causes the
31 arrest of any person shall not be held civilly liable for detention, malicious prosecution,
32 false imprisonment, or false arrest of the person detained or arrested, when such detention
33 is in a reasonable manner for a reasonable length of time, and, if in detaining or in
34 causing the arrest of such person, the merchant, the merchant's agent, the merchant's
35 employee, or the peace officer had, at the time of the detention or arrest, probable cause
36 to believe that the person committed an offense under subsection (a) of this section. If
37 the person being detained by the merchant, the merchant's agent, or the merchant's
38 employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the
39 merchant's employee, shall call or notify, or make a reasonable effort to call or notify the
40 parent or guardian of the minor, during the period of detention. A merchant, a merchant's
41 agent, or a merchant's employee, who makes a reasonable effort to call or notify the
42 parent or guardian of the minor shall not be held civilly liable for failing to notify the
43 parent or guardian of the minor."

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