

§ 1-538.2. Civil liability for larceny, shoplifting, theft by 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, 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, the owner 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. The total compensatory and consequential damages awarded to a plaintiff against a defendant under this section shall not be less than one hundred fifty dollars (\$150.00) and shall not exceed one thousand dollars (\$1,000), except an act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this section.

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

(c) An action may be brought under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action.

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

- (1) The salary paid to any employee for investigation, reporting, testifying, or any other time related to the investigation or prosecution for any violation under subsection (a) of this section; and
- (2) Any costs, such as mileage, postage, stationery, or telephone expenses that were incurred as a result of the violation.

(c2) The owner of the property may seek payment for damages under subsections (a) and (b) of this section prior to filing a civil action, by sending the violator a demand letter. If such a letter is sent, it shall be substantially similar to the following:

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

In the event you fail to comply with our demand for one hundred fifty dollars (\$150.00) within 15 days from the date of your receipt of the notice, you may be held civilly liable for an amount not less than one hundred fifty dollars (\$150.00) and not more than one thousand dollars (\$1,000) in a civil action against you to recover the penalties and damages authorized by law, which include court costs and attorneys' fees. If you pay the one hundred

fifty dollars (\$150.00), (store name/owner of the property) will have no further civil remedy against you arising from the events occurring on (date).

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

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

YOU HAVE A RIGHT TO CONTEST YOUR LIABILITY IN COURT."

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

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

(d) Nothing contained in this act shall prohibit recovery upon any other theory in the law. (1987, c. 519, s. 1; 1987 (Reg. Sess., 1988), c. 1081, s. 4.1; 1995, c. 185, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 3.)