

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-159
HOUSE BILL 1519**

AN ACT TO PREVENT CRIMINALS FROM PROFITING FROM THEIR CRIMES AND TO BETTER ENABLE CRIME VICTIMS TO SATISFY RESTITUTION ORDERS AND CIVIL JUDGMENTS ENTERED AGAINST THEIR OFFENDERS FROM THE OFFENDERS' ASSETS, WHICH MAY INCLUDE PROFIT FROM CRIME.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 1 through 25 of Chapter 15B of the General Statutes are redesignated as Article 1 of Chapter 15B. The Revisor of Statutes is authorized to make changes in the newly designated Article 1 that will reflect the results of the recodification.

SECTION 2. Chapter 15B of the General Statutes is amended by adding a new Article to read:

"Article 2.

"The Crime Victims Financial Recovery Assistance Act.

"§ 15B-30. Declaration of policy and purpose.

The General Assembly of North Carolina hereby declares as a matter of public policy that:

- (1) No person who commits a crime should thereafter gain monetary profit as the result of committing the crime.
- (2) Victims of crime have a special relationship to any profit from the crime committed against them, including the personal belongings and memorabilia of a convicted felon whose criminal actions and resulting notoriety enhance the value of those belongings and memorabilia.
- (3) To the extent profit from crime would not have been realized but for an offender's commission of illegal acts, an offender does not have an equitable interest in the profit and allowing the offender to retain the profit would result in the offender's unjust enrichment.

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 crime victims have difficulty satisfying restitution orders or civil judgments entered against their offenders because the victims often lack the expertise and resources to identify or locate assets that an offender may have.

In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing a mechanism by which crime victims are notified of the existence of an offender's assets and are authorized to bring an action to recover those assets.

"§ 15B-31. Definitions.

The following definitions apply in this Article:

- (1) Commission. – The Crime Victims Compensation Commission established under G.S. 15B-3.

- (2) Convicted. – A finding or verdict of guilty by a jury or by entry of a plea of guilty or no contest, or a finding of not guilty by reason of insanity.
- (3) Crime memorabilia. – Any tangible property belonging to or that belonged to an offender prior to conviction, the value of which is increased by the notoriety gained from the conviction of a felony.
- (4) Earned income. – Income derived from one's own labor or through active participation in a business, as distinguished from income including dividends or investments.
- (5) Eligible person. – Any of the following:
 - a. A victim of the crime for which the offender was convicted.
 - b. A surviving spouse, parent, or child of a deceased victim of the crime for which the offender was convicted.
 - c. Any other person dependent for the person's principal support upon a deceased victim of the crime for which the offender was convicted.

However, 'eligible person' does not include the offender or an accomplice to the offender.
- (6) Felony. – An offense defined as a felony by any North Carolina or United States statute that was committed in North Carolina and that resulted in physical or emotional injury, or death, to another person.
- (7) Funds of an offender. – All funds and property received from any source by an offender, excluding child support and earned income, where the offender:
 - a. Is an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility or federal correctional institute, and includes funds that a superintendent, sheriff, or municipal official receives on behalf of an inmate or prisoner and deposits in an inmate account to the credit of the inmate or deposits in a prisoner account to the credit of the prisoner; or
 - b. Is not an inmate or prisoner but who is serving a sentence of probation, conditional discharge, or post-release supervision.
- (8) Offender. – A person who has been convicted of a felony or that person's legal representative or assignee.
- (9) Profit from crime. – Any income, assets, or property obtained through or generated from the commission of a crime for which the offender was convicted, including any income, assets, or property generated from the sale of crime memorabilia or obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of the crime, as well as any gain from the sale, conversion, or exchange of the income, assets, or property. 'Profit from crime' does not include voluntary donations or contributions to an offender used to assist in the appeal of a conviction, provided the donation or contribution is not given in exchange for something of material value.
- (10) Victim. – Any natural person who suffers physical or emotional injury, or the threat of physical or emotional injury, as the result of the commission of a felony.

"§ 15B-32. Notice of contract or agreement to pay.

- (a) Notice to Commission. –
 - (1) Every person, firm, corporation, partnership, association, or other legal entity, or representative of a person, firm, corporation, partnership, association, or entity that knowingly contracts for, pays, or agrees to pay to an offender (i) profit from crime or (ii) funds of an offender

where the value or aggregate value of the payment or payments exceeds ten thousand dollars (\$10,000) shall submit to the Commission a copy of the contract or reduce to writing the terms of any oral agreement or obligation to pay as soon as practicable after discovering the payment or intended payment constitutes profit from crime or funds of an offender.

- (2) Whenever the payment or obligation to pay involves funds of an offender that a superintendent, sheriff, or municipal officer (i) receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility, (ii) deposits or will deposit in an inmate account to the credit of an inmate or prisoner, and (iii) the value of such funds exceeds or will exceed ten thousand dollars (\$10,000), the State or subdivision of the State shall also give written notice to the Commission.
- (3) Whenever the State or a subdivision of the State makes a payment or has an obligation to pay funds of an offender and the value of such funds exceeds or will exceed ten thousand dollars (\$10,000), the State or subdivision of the State shall also give written notice to the Commission.
- (4) In all other instances where the payment or obligation to pay involves funds of an offender and the value or aggregate value of the funds exceeds or will exceed ten thousand dollars (\$10,000), the offender who receives or will receive the funds shall give written notice to the Commission.

(b) Notice to Eligible Persons. – The Commission shall, upon receipt of a notice of a contract, an agreement to pay, or payment of profit from crime or funds of an offender, notify in writing by certified mail, return receipt requested, all known eligible persons where the eligible persons' names and addresses are known to the Commission. The Commission may, in its discretion, provide for additional notice as it deems necessary.

"§ 15B-33. Penalties.

(a) Assessment and Civil Penalty for Failure to Give Notice. – Any person or entity, other than the State, a subdivision of the State, or a person who is a superintendent, sheriff, or municipal official, who willfully fails to give notice as required by G.S. 15B-32 is subject to an assessment of up to the amount of the payment or obligation to pay and a civil penalty of up to one thousand dollars (\$1,000) or ten percent (10%) of the payment or obligation to pay, whichever is greater.

(b) Notice and Opportunity to Be Heard Required. – After providing notice and opportunity to be heard in accordance with the provisions of Chapter 150B of the General Statutes, the Commission may order the respondent to pay the assessment and civil penalty imposed by this section.

(c) Failure to Pay. – If a respondent fails to pay the assessment and civil penalty imposed by this section within sixty (60) days of being ordered to pay, the assessment and civil penalty may be recovered from the respondent by an action brought by the attorney general, upon the request of the Commission, in any court of competent jurisdiction.

(d) Establishment of Escrow Account; Notice to Eligible Persons. – The Commission shall deposit the assessment in an escrow account pending the expiration of the three-year statute of limitations authorized by G.S. 15B-34 to preserve the funds to satisfy a civil judgment in favor of an eligible person to whom the failure to give notice relates. The Commission shall notify any eligible person who may have a claim against the offender of the existence of the funds being held in escrow. The notice shall instruct the eligible person that the person may have a right to commence a civil action against the offender as well as any other information deemed necessary by the Commission.

(e) Satisfaction of Judgment from Escrow Account. – Upon an eligible person's presentation to the Commission of a civil judgment for damages arising out of the offense for which the offender was convicted, the Commission shall satisfy up to one hundred percent (100%) of that judgment, including costs and disbursements as taxed by the clerk of the court, with the escrowed fund obtained pursuant to this section, but in no event shall the amount of all judgments, costs, and disbursements satisfied from the escrowed funds exceed the amount in escrow. If more than one eligible person indicates to the Commission that the eligible person intends to commence or has commenced a civil action against the offender, the Commission shall delay satisfying any judgment, costs, and disbursements until the claims of all eligible persons are reduced to judgment. If the aggregate of all judgments, costs, and disbursement obtained exceeds the amount of escrowed funds, the amount used to partially satisfy each judgment shall be reduced to a pro rata share.

(f) Return of Unclaimed Escrowed Funds. – After the expiration of the three-year statute of limitations period established in G.S. 15B-34, the Commission shall review all judgments that have been satisfied from the escrowed funds. In the event no claim was filed prior to the expiration of the three-year statute of limitations, the Commission shall return the escrowed amount to the respondent. In the event a claim or claims are pending at the expiration of the statute of limitations, the funds shall remain escrowed until the final determination of all claims to allow the Commission to satisfy any judgment which may be obtained by the eligible person after which time any remaining escrowed amount shall be returned to the respondent.

(g) Remittance of Proceeds from Civil Penalty. – The Commission shall remit the clear proceeds of the civil penalty of up to one thousand dollars (\$1,000) or ten percent (10%) of the payment or obligation to pay, whichever is greater, assessed under this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"§ 15B-34. Civil action to recover profits or funds; responsibilities of the Commission.

(a) Civil Action. – Notwithstanding any inconsistent provision of law with respect to the timely bringing of an action, an eligible person may, within three years of the discovery of any profit from crime or funds of an offender, bring a civil action in a court of competent jurisdiction against an offender for damages arising out of the offense for which the offender was convicted.

(b) Notice by Eligible Persons. – Upon filing an action under subsection (a) of this section, the eligible person shall give notice to the Commission of the filing by delivering a copy of the summons and complaint to the Commission. The eligible person may also give notice to the Commission prior to filing the action so as to allow the Commission to apply for any appropriate provisional remedies, which are otherwise authorized to be invoked prior to the commencement of an action.

(c) Responsibilities of Commission. – Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the eligible person prior to filing an action, the Commission shall immediately take action to:

- (1) Notify all other known eligible persons of the filing of the civil action by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission.
- (2) Provide, in its discretion, for additional notice as it deems necessary.
- (3) Avoid the wasting of the assets identified in the complaint as the profit from crime or funds of an offender in any manner consistent with subsection (d) of this section.

(d) Standing; Authority to Avoid Wasting of Assets. – The Commission has standing and, acting on its own behalf or on behalf of all eligible persons, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action brought under subsection (a) of this section, including attachment, injunction, constructive trust, and receivership. On a motion for a

provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

"§ 15B-35. Subrogation by the Crime Victims Compensation Fund.

Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund pursuant to G.S. 15B-18.

"§ 15B-36. Conviction overturned or pardon issued.

If profit from crime is subject to a provisional remedy on behalf of eligible persons and the conviction for the criminal offense from which profit from crime is realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon of innocence for the criminal offense, those funds shall be returned to the rightful owner.

"§ 15B-37. Evasive action void.

Any action taken by an offender, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Article shall be void as against the public policy of this State."

SECTION 3. G.S. 1-15.1(a) reads as rewritten:

"(a) Notwithstanding any other provision of law, if a defendant is convicted of a criminal offense and is ordered by the court to pay restitution or restitution is imposed as a condition of probation, special probation, work release, or parole, then all applicable statutes of limitation and statutes of repose, except as established herein, are tolled for the period set forth in this subsection for purposes of any civil action brought by an aggrieved party against that defendant for damages arising out of the offense for which the defendant was convicted. Any statute of limitation or repose applicable in the civil action shall be tolled from the time of entry of the court order

- (1) Requiring that restitution be made,
- (2) Making restitution a condition of probation or special probation, or
- (3) Recommending that restitution be made a condition of work release or parole,

and until the defendant has paid in full the amount of restitution ordered or imposed. ~~Provided, however, in no event shall~~ Except as provided in G.S. 15B-34, an action to recover damages arising out of the criminal offense shall not be commenced more than 10 years from the last act of the defendant giving rise to the cause of action."

SECTION 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 5. This act becomes effective October 1, 2004, and applies to contracts for profit from crime entered into on or after that date or funds of an offender that have accrued on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:43 p.m. this 2nd day of August, 2004