

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 574 Session of
2007

INTRODUCED BY MANN, ARGALL, BAKER, BENNINGHOFF, BEYER,
CALTAGIRONE, CLYMER, COSTA, CREIGHTON, DALEY, DeLUCA,
DENLINGER, EACHUS, FRANKEL, FREEMAN, GALLOWAY, GODSHALL,
GOODMAN, HARRIS, HENNESSEY, HERSHEY, HUTCHINSON, KULA, MURT,
MUSTIO, O'NEILL, PALLONE, PEIFER, PETRI, PETRONE, PYLE,
SCAVELLO, SIPTROTH, SOLOBAY, STERN, SWANGER, VEREB, WALKO AND
WOJNAROSKI, MARCH 6, 2007

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 6, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, prohibiting profits
3 received by third-party persons from the commission of a
4 crime.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 8312 of Title 42 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 8312. Profits received as a result of commission of crime.

10 (a) General rule.--If a person has been convicted of a
11 crime, every person who knowingly contracts for, pays or agrees
12 to pay any profit from a crime to that person or a third party
13 shall give written notice to the [board] office of the payment
14 or obligation to pay as soon as practicable after discovering
15 that the payment or intended payment is a profit from a crime.
16 The [board] office, upon receipt of notice of a contract, an

1 agreement to pay or payment of profits from a crime, shall
2 notify all known eligible persons at their last known address of
3 the existence of the profits.

4 (b) Right of action.--Notwithstanding any inconsistent
5 provision of law or rules of civil procedure with respect to the
6 timely bringing of an action, any eligible person shall have the
7 right to bring a civil action in a court of competent
8 jurisdiction to recover money damages from a person convicted of
9 a crime or third party or the legal representative of that
10 convicted person or third party within three years of the
11 discovery of any profits from a crime. Any damages awarded in
12 this action shall be recoverable only up to the value of the
13 profits from the crime. If an action is filed under this
14 subsection after the expiration of all other applicable statutes
15 of limitation, any other eligible person must file any action
16 for damages as a result of the crime within three years of the
17 actual discovery of profits from the crime or of actual notice
18 received from or notice published by the [board] office of the
19 discovery, whichever is later. If any profits from a crime
20 remain after the payment of claims made under this section, the
21 [board] office shall have the right to bring a civil action
22 within two years in a court of competent jurisdiction to recover
23 any payments made by the [board] office pursuant to [Article IV
24 of the act of April 9, 1929 (P.L.177, No.175), known as The
25 Administrative Code of 1929,] the act of November 24, 1998
26 (P.L.882, No.111), known as the Crime Victims Act, and any
27 expenses incurred by the [board] office pursuant to [Article IV
28 of The Administrative Code of 1929] the Crime Victims Act or
29 this section with regard to such crime or the person convicted
30 of such crime.

1 (c) Notice.--Upon filing an action under subsection (b), the
2 eligible person shall give notice to the [board] office of the
3 filing by delivering a copy of the complaint to the [board]
4 office. The eligible person may also give notice to the [board]
5 office prior to filing the action so as to allow the [board]
6 office to apply for any appropriate remedies which are otherwise
7 authorized to be invoked prior to the commencement of an action.

8 (d) Responsibilities of [board] office.--Upon receipt of a
9 copy of a complaint, the [board] office shall immediately take
10 action as necessary to:

11 (1) Notify all other known eligible persons of the
12 alleged existence of profits from a crime by certified mail,
13 return receipt requested, where the eligible persons' names
14 and addresses are known by the [board] office.

15 (2) Publish, at least once a year for three years from
16 the date it is initially notified by an eligible person under
17 subsection (c), a legal notice in newspapers of general
18 circulation in the county wherein the crime was committed and
19 in counties contiguous to that county advising any eligible
20 persons of the existence of profits from a crime. The [board]
21 office may in its discretion provide for additional notice as
22 it deems necessary.

23 (3) Avoid the wasting of the assets identified in the
24 complaint as the newly discovered profits from a crime in any
25 manner consistent with subsection (e).

26 (e) Other remedies.--The [board] office, acting on behalf of
27 all eligible persons, shall have the right to apply for any and
28 all remedies that are also otherwise available to an eligible
29 person bringing an action under subsection (b). The remedies of
30 attachment, injunction, receivership and notice of pendency

1 available under law to an eligible person bringing an action
2 under subsection (b) shall also be available to the [board]
3 office in all actions under this subsection. On a motion for a
4 remedy, the moving party shall state whether any other remedy
5 has previously been sought in the same action against the same
6 defendant or third party. The court may require the moving party
7 to elect between those remedies to which it would otherwise be
8 entitled.

9 (e.1) Receipt of victims' compensation.--The office may seek
10 repayment from an eligible person recovering damages under this
11 section who has received an award for victims' compensation
12 under the Crime Victims Act in accordance with the provisions of
13 the Crime Victims Act.

14 (f) Evasive action null and void.--Any action taken by any
15 person convicted of a crime, or by a third party subject to the
16 provisions of this section, whether by way of execution of a
17 power of attorney, creation of corporate entities or otherwise,
18 to defeat the purpose of this section shall be null and void as
19 against the public policy of this Commonwealth.

20 (g) Penalties.--

21 (1) Any person subject to the provisions of this section
22 who willfully fails to do any of the following is subject to
23 a civil penalty of not less than \$10,000 for each offense and
24 not more than an amount equal to three times the contract
25 amount:

26 (i) submit to the [board] office a copy of the
27 contract described in subsection (a); or

28 (ii) pay over to the [board] office any moneys or
29 other consideration as required by this section.

30 (2) If two or more persons are subject to the penalties

1 provided in this section, the persons shall be jointly and
2 severally liable for the payment of the penalty imposed.

3 (3) After notice and opportunity to be heard is
4 provided, the [board] office may by order assess the
5 penalties described in this section.

6 (4) If the penalties are not paid within 30 days from
7 the date of the order, any penalty assessed under this
8 section shall bear interest at the rate of 1% per month,
9 compounded monthly.

10 (5) An action to recover a civil penalty assessed under
11 this section may be brought by the [board] office in a court
12 of competent jurisdiction within six years after the cause of
13 action accrues.

14 (6) Any moneys recovered under this subsection shall be
15 paid into the Crime Victim's Compensation Fund.

16 (g.1) Exceptions.--The provisions of this section do not
17 apply to profits received by a third party when:

18 (1) The crime was committed against a public figure.

19 (2) The third party receiving the profit obtains the
20 written consent of the victim of the crime or the victim's
21 closest surviving family member by blood, marriage or
22 adoption.

23 (3) The profit is generated by an item of publication.
24 The publisher shall not be required to obtain written consent
25 of the victim of the crime or the victim's closest surviving
26 family member by blood, marriage or adoption when the
27 information serving as the basis for the publication is
28 obtained from records in the public domain. Nothing in this
29 subsection shall be construed to permit or deny publication
30 by the person convicted of the crime or the legal

1 representative of that convicted person.

2 (g.2) Severability.--The provisions of this section are
3 severable, and, if any word, phrase, clause, sentence,
4 subsection or provision of the section is for any reason held to
5 be unconstitutional, the decision of the court shall not affect
6 or impair any of the remaining provisions of this section. It is
7 hereby declared as the legislative intent that this section
8 would have been adopted had such unconstitutional word, phrase,
9 clause, sentence, subsection or provision not been included.

10 (h) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection:

13 ["Board." The Crime Victim's Compensation Board as defined
14 in section 477 of the act of April 9, 1929 (P.L.177, No.175),
15 known as The Administrative Code of 1929.]

16 "Convicted." Includes conviction by entry of a plea of
17 guilty or nolo contendere, conviction after trial and a finding
18 of not guilty due to insanity or of guilty but mentally ill.

19 "Eligible person." Includes any of the following persons:

20 (1) A direct victim of the particular crime in question,
21 as ["victim"] "direct victim" is defined in section [479.1 of
22 the act of April 9, 1929 (P.L.177, No.175), known as The
23 Administrative Code of 1929] 103 of the act of November 24,
24 1998 (P.L.882, No.111), known as the Crime Victims Act.

25 (2) An intervenor in such crime.

26 (3) A surviving spouse, parent or child of a deceased
27 victim of or intervenor in such crime.

28 (4) Any other person dependent for his principal support
29 upon a deceased victim of or intervenor in such crime.

30 No person who is criminally responsible for the crime in

question or was an accomplice of the person who is criminally responsible shall be an eligible person.

"Item of publication." Includes, but is not limited to, any item appearing in a newspaper, periodical, magazine, journal, textbook, book or other reading matter, film, motion picture, television program, videotape, sound recording, interview, radio program or live presentation of any kind.

"Office." The Office of Victim Services in the Department of Corrections.

"Profit from a crime." Includes any of the following:

(1) Any property obtained through or income generated from the commission of a crime of which the defendant was convicted.

(2) Any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime of which the defendant was convicted, including any gain realized by such sale, conversion or exchange.

(3) Any property which the defendant obtained or income generated as a result of having committed the crime of which the defendant was convicted, including any assets 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 property obtained by or income generated from the sale, conversion or exchange of such property and any gain realized by such sale, conversion or exchange.

(4) Any property, memorabilia or income generated from the sale, conversion or exchange of such property or memorabilia the value of which is increased by the notoriety gained from the commission of the crime, including, but not

1 limited to, personal property or memorabilia of the defendant
2 or personal property or memorabilia of a third-party person
3 which has a relationship to the defendant or the commission
4 of the crime.

5 The term shall not include any item of publication, property or
6 memorabilia that has expressive value or is protected by the
7 first amendment to the Constitution of the United States or
8 income generated from any item of publication, property or
9 memorabilia that has expressive value or is protected by the
10 first amendment.

11 "Public figure." The term shall include, but is not limited
12 to, a person who holds any elected or appointed public office or
13 any person who is deemed to have been publicly famous or
14 infamous because of who the person is or what the person has
15 done prior to the commission of the crime. The term does not
16 include a person who becomes publicly famous or infamous as a
17 result of the commission of the crime.

18 "Third party." Includes any person except for an eligible
19 person or a person convicted of the crime.

20 Section 2. This act shall take effect in 60 days.