

CHAPTER 190

AN ACT concerning certain profits related to crime, supplementing Title 52 of the Revised Statutes and repealing P.L.1983, c.33.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.52:4B-61 Findings, declarations relative to profits related to crime.

1. a. The Legislature finds:

(1) The State of New Jersey has a compelling interest in preventing any person who is convicted of a crime from directly or indirectly profiting from the crime or circumstances surrounding the crime.

(2) To that end, the State has established the Victims of Crime Compensation Board to help compensate victims of crime for their loss.

b. The Legislature declares that it is altogether fitting and proper and within the public interest to provide a mechanism where profits from a crime that are received by a convicted person should be available as restitution to the victim of the crime.

C.52:4B-62 Definitions relative to profits related to crime.

2. For the purposes of this act:

a. "Crime" means:

(1) any crime as defined under the laws of this State; or

(2) any offense in any jurisdiction which includes all of the essential elements of any crime as defined under the laws of this State; and

(a) the crime victim was a resident of this State at the time of the commission of the offense;

or

(b) the act or acts constituting the offense occurred in whole or in part in this State.

b. "Profits from a crime" means:

(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, including any gain realized by such sale, conversion or exchange; and

(3) any property which the defendant obtained or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, a 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.

c. "Funds of a convicted person" means all funds and property received from any source by a person convicted of a crime, or by the representative of such person, including the convicted person's spouse, children, parents, siblings or such other person whom a court of competent jurisdiction may deem to be the alter ego of the convicted person, giving due regard to the purpose and intent of this act, but excluding child support and earned income, where such person:

(1) is an inmate or prisoner serving a sentence under the custody and control of the Department of Corrections and includes funds received on behalf of an inmate or prisoner and deposited in an inmate or prisoner account to the credit of the inmate or prisoner;

(2) is not an inmate or prisoner, but who is serving a sentence of probation or conditional discharge or is presently subject to a term of post release supervision, but shall include earned income earned during a period in which such person was not in compliance with the conditions of probation, conditional discharge or post release supervision; or

(3) is no longer subject to a sentence of probation, conditional discharge or post release supervision, and where, within the previous three years, the full or maximum term or period terminated or expired or such person was granted a discharge by the State Parole Board pursuant to applicable law, or granted a discharge or termination from probation pursuant to applicable law or granted a discharge or termination under applicable federal or State law, rules or regulations prior to the expiration of such full or maximum term or period; and includes only:

(a) those funds paid to such person as a result of any interest, right, right of action, asset, share, claim, recovery or benefit of any kind that the person obtained, or that accrued in favor of such person, prior to the expiration of such sentence, term or period;

(b) any recovery or award collected in a lawsuit after expiration of such sentence where the right or cause of action accrued prior to the expiration or service of such sentence; and

(c) earned income earned during a period in which such person was not in compliance with the conditions of probation, conditional release or post release supervision.

d. "Crime victim" means:

(1) the victim of a crime;

(2) the representative of a crime victim;

(3) a Good Samaritan, as provided in P.L.1963, c.140 (C.2A:62A-2 et seq.);

(4) the Victims of Crime Compensation Board or other governmental agency that has received an application for or provided financial assistance or compensation to the victim.

e. "Earned income" means income derived from one's own labor or through active participation in a business, but does not include income from dividends or investments.

f. "Board" means the Victims of Crime Compensation Board established pursuant to section 3 of P.L.1971, c.317 (C.52:4B-3).

C.52:4B-63 Requirement for written notice of payment to board.

3. a. Every person, firm, corporation, partnership, association or other legal entity, or representative of such person, firm, corporation, partnership, association or entity, which knowingly contracts for, pays, or agrees to pay: (1) any profits from a crime to a person charged with or convicted of that crime, or to the representative of such person, or (2) any funds of a convicted person where such conviction is for a crime and the value, combined value or aggregate value of the payment or payments of such funds exceeds or will exceed \$10,000 shall give written notice to the board of the payment or obligation to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from a crime or funds of a convicted person.

b. Notwithstanding subsection a. of this section, whenever the payment or obligation to pay involves funds of a convicted person that a superintendent of a correctional facility receives or will receive on behalf of an inmate or prisoner serving a sentence with the Department of Corrections and deposits or will deposit in an inmate or prisoner account to the credit of the inmate or prisoner and the value, combined value or aggregate value of such funds exceeds or will exceed \$10,000, the superintendent shall also give written notice to the board. Further, whenever the State makes payment or has an obligation to pay funds of a convicted person and the value, combined value or aggregate value of such funds exceeds or will exceed \$10,000, the State shall also give written notice to the board. In all other instances where the payment or obligation to pay involves funds of a convicted person and the value, combined value or aggregate value of such funds exceeds or will exceed \$10,000, the convicted person who receives or will receive such funds, or the representative of such person, shall give written notice to the board.

c. The board, upon receipt of notice of a contract, an agreement to pay or payment of profits from a crime or funds of a convicted person pursuant to subsection a. or b. of this section, or upon receipt of notice of funds of a convicted person from the superintendent where the inmate or prisoner is confined, shall notify all known crime victims of the convicted person of the existence of such profits or funds at their last known address.

C.52:4B-64 Crime victim right to bring civil action for damages; statute of limitations.

4. Notwithstanding any other law to the contrary, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of a crime of which the crime victim is a victim, or the representative of that convicted person, within three years of the discovery of any profits from a crime or funds of a convicted person, as those terms are defined in this act. Notwithstanding any other provision of law to the contrary, a judgment obtained pursuant to this section shall not be subject to execution or enforcement against the first \$1,000 dollars deposited in an inmate account to the credit of the inmate or in a prisoner account to the credit of the prisoner. In addition, where the civil action involves funds of a convicted person and such funds were recovered by the convicted person pursuant to a judgment obtained in a civil action, a judgment obtained pursuant to this section

may not be subject to execution or enforcement against a portion thereof. If an action is filed pursuant to this section after the expiration of all other applicable statutes of limitation, any other crime victims must file any action for damages as a result of the crime within three years of the actual discovery of such profits or funds, or within three years of actual notice received from or notice published by the board of such discovery, whichever is later.

C.52:4B-65 Notice of filing of action to board.

5. Upon filing an action pursuant to section 4 of this act, the crime victim shall give notice to the board of the filing by delivering a copy of the summons and complaint to the board. The crime victim may also give such notice to the board prior to filing the action so as to allow the board to apply for any appropriate provisional remedies which are otherwise authorized to be invoked prior to the commencement of an action.

C.52:4B-66 Actions of board upon receipt of notice from crime victim.

6. Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the crime victim prior to filing the action as provided in section 5 of this act, the board shall immediately take such actions as are necessary to:

a. notify all other known crime victims of the alleged existence of profits from a crime or funds of a convicted person by certified mail, return receipt requested, where the victims' names and addresses are known by the board;

b. publish, at least once every six months for three years from the date it is initially notified by a victim, pursuant to section 5 of this act, a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising any crime victims of the existence of profits from a crime or funds of a convicted person. The board may, in its discretion, provide for such additional notice as it deems necessary;

c. avoid the wasting of the assets identified in the complaint as the newly discovered profits from a crime or as funds of a convicted person.

C.52:4B-67 Provisional remedies available to board, plaintiff.

7. The board, acting on behalf of the plaintiff and all other victims, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff.

a. The provisional remedies of attachment, injunction, receivership and notice of pendency available to the plaintiff under the civil practice law and rules, shall also be available to the board in all actions under this section.

b. 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.

C.52:4B-68 Failure to give notice of payment; notice of hearing, proceedings; findings, penalties.

8. a. Whenever it appears that a person or entity has knowingly and willfully failed to give notice in violation of subsection a. of section 3 of this act, the board shall be authorized to serve a notice of hearing upon the person or entity by personal service or by registered or certified mail. The notice shall contain the time, place and purpose of the hearing. In addition, the notice shall be accompanied by a petition alleging facts of an evidentiary character that support or tend to support that the person or entity, who shall be named therein as a respondent, knowingly and willfully failed to give the notice required in subsection a. of section 3 of this act. Service of the notice and petition shall take place at least 15 days prior to the date of the hearing.

b. The chairperson of the board, or any board member designated by the chairperson, shall preside over the hearing. The presiding member shall administer oaths and may issue subpoenas. The presiding member shall not be bound by the rules of evidence or civil procedure, but the presiding member's determination shall be based on a preponderance of the evidence. At the hearing, the burden of proof shall be on the board, which shall be represented by the counsel to

the board or another person designated by the board. The board shall produce witnesses and present evidence in support of the alleged violation, which may include relevant hearsay evidence. The respondent, who may appear personally at the hearing, shall have the right of counsel and may cross-examine witnesses and produce evidence and witnesses in his behalf, which may include relevant hearsay evidence. The issue of whether the person who received an alleged payment or obligation to pay committed the underlying crime shall not be relitigated at the hearing. Where the alleged violation is the failure to give notice of a payment amount involving two or more payments the combined value or aggregate value of which exceeds \$10,000, no violation shall be found unless it is shown that such payments were intentionally structured to conceal their character as funds of a convicted person. At the conclusion of the hearing, if the presiding member is not satisfied that there is a preponderance of evidence in support of a violation, the member shall dismiss the petition. If the presiding member is satisfied that there is a preponderance of the evidence that the respondent committed one or more violations, the member shall so find. Upon such a finding, the presiding member shall prepare a written statement, to be made available to the respondent and respondent's counsel, indicating the evidence relied on and the reasons for finding the violation. The board shall adopt, promulgate, amend and repeal administrative rules and regulations governing the procedures to be followed with respect to hearings, including rules and regulations for the administrative appeal of a decision made pursuant to this paragraph, provided such rules and regulations are consistent with the provisions of this section.

c. Whenever it is found that a respondent knowingly and willfully failed to give the required notice, the board shall impose an assessment of up to the amount of the payment or obligation to pay and a civil penalty of up to \$1,000 or ten percent of the payment or obligation to pay, whichever is greater. If a respondent fails to pay the assessment and civil penalty imposed, the assessment and civil penalty may be recovered from the respondent by an action brought by the Attorney General, upon the request of the board, in any court of competent jurisdiction. The board shall deposit the assessment in an escrow account pending the expiration of the three-year statute of limitations authorized by section 4 of this act to preserve such funds to satisfy a civil judgment in favor of a person who is a victim of a crime committed by the convicted person to whom such failure to give notice relates. The board shall pay the civil penalty to the State Treasurer who shall deposit the money in the State treasury. The board shall then notify any crime victim or crime victims, who may have a claim against the convicted person, of the existence of such moneys. Such notice shall instruct such person or persons that they may have a right to commence a civil action against the convicted person, as well as any other information deemed necessary by the board. Upon a crime victim's presentation to the board of a civil judgment for damages incurred as a result of the crime, the board shall satisfy up to 100 percent of that judgment, including costs and disbursements as taxed by the clerk of the court, with the escrowed fund, but in no event shall the amount of all judgments, costs and disbursements satisfied from such escrowed funds exceed the amount in escrow. If more than one such crime victim indicates to the board that they intend to commence or have commenced a civil action against the convicted person, the board shall delay satisfying any judgment, costs and disbursements until the claims of all such crime victims 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.

After expiration of the three-year statute of limitations period established in section 4 of this act, the board shall review all judgments that have been satisfied from such escrowed funds. In the event no claim was filed or judgment obtained prior to the expiration of the three-year statute of limitations, the board 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, such funds shall remain escrowed until the final determination of all such claims to allow the board to satisfy any judgment which may be obtained by the crime victim. Upon the final determination of all such claims and the satisfaction of up to 100 percent of such claims by the board, the board shall be authorized to impose an additional civil penalty of up to \$1,000 or ten percent of the payment or obligation to pay, whichever is greater. Prior to imposing any such penalty, the board shall serve a notice upon the respondent by personal service or by registered or certified mail of the

intent of the board to impose such penalty 30 days after the date of the notice and of the opportunity to submit documentation concerning the board's determination. After imposing and deducting any such additional civil penalty, the board shall distribute 50 percent of the remaining escrowed funds to the State Treasurer, who shall deposit the money in the General Fund for general State purposes. The other 50 percent of the remaining escrowed funds shall be distributed to the board and may be used for purposes the board deems appropriate, including, but not limited to, awarding scholarships pursuant to P.L.2000, c.163 (C.18A:71B-53 et seq.), the Tony Pompelio Commemorative Scholarship Fund Act.

d. Notwithstanding any other provision of law to the contrary, an alleged failure by a convicted person to give notice under this act may not result in proceedings for an alleged violation of the conditions of probation, conditional release or post release supervision unless: one or more claims were made by a crime victim against the convicted person pursuant to this section, and the crime victims board imposes an assessment or penalty upon the convicted person pursuant to this section, and the convicted person fails to pay the total amount of the assessment or penalty within sixty days of the imposition of such assessment or penalty.

e. Records maintained by the board and proceedings by the board or a board member based thereon regarding a claim submitted by a victim or a claimant shall be deemed confidential.

C.52:4B-69 Cause of action by crime victim for enhanced value of memorabilia gained from crime.

9. a. A crime victim shall have a cause of action against any person who offers for sale or purports to offer for sale, any memorabilia or other property or item of the defendant, the value of which is enhanced by the notoriety gained from the commission of the crime.

b. Upon proof, by a preponderance of the evidence, of a person's violation of this section and of resulting damages, the person shall be liable as follows:

(1) To the person or persons injured, for an award in the amount of damages incurred as a result of the sale or purported sale of the defendant's property, including damages for any emotional distress suffered as a result of the sale, such punitive damages as may be assessed, and any reasonable attorney's fees and costs of suit incurred; and

(2) Such injunctive relief as the court may deem necessary to avoid the defendant's continued violation.

C.52:4B-70 Severability.

10. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the sections which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Repealer.

11. P.L.1983, c.33 (C.52:4B-26 et seq.) is repealed.

12. This act shall take effect immediately.

Approved October 15, 2003.