

SENATE BILL No. 262

By Senator Adkins

2-7

AN ACT concerning crimes; relating to profits from such crimes and civil action to recover thereof; crime victims compensation board; amending K.S.A. 74-7319 and 74-7320 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 74-7319 is hereby amended to read as follows: 74-7319. ~~(a) Any individual, partnership, corporation or association which contracts with any person accused or convicted of the commission of a crime in this state, or with a representative or assignee of such a person, to use the crime committed or alleged to have been committed by such person or the expression of such person's thoughts, feelings, opinions or emotions regarding the crime in any book, magazine or other publication or in any movie, radio, television presentation or live entertainment shall pay to the crime victims compensation board all moneys which would otherwise by the terms of the contract be owed to the person who committed or is alleged to have committed the crime, or such person's representatives or assignees, provided, such book, magazine or other publication, movie, radio or television presentation or live entertainment of any kind deals principally with the crime for which the person is accused and convicted. If any person is accused and convicted of the commission of two or more crimes, the crimes shall, for purposes of determining whether such publication, presentation or entertainment deals principally with the crime for which the person is accused and convicted, be combined and considered as one crime.~~

~~—(b) Upon receipt of such funds pursuant to subsection (a), the crime victims compensation board immediately shall notify the victim of the crime, as defined in K.S.A. 74-7301, and amendments thereto, of such receipt. Within six months of such notification, the victim may file a claim with the board for disbursement of such moneys. If proper application is made and the victim can provide the board evidence of a money judgment within two years of such notification of the victim by the board, and such judgment is against the person accused or convicted of committing such crime, the board shall pay such amount, plus accrued interest at the rate imposed on civil money judgments, to the victim. Such amount shall not exceed the lesser of the amount of the judgment or the amount of the~~

1 funds received by the board.

2 ~~—(c) In the event at the time of the notification provided in subsection~~
3 ~~(b), the applicable civil statute of limitations on filing a civil action against~~
4 ~~such person accused of or convicted of the crime shall have run, the victim~~
5 ~~shall have six months from such notification to file a notice of claim as~~
6 ~~provided in subsection (b) and a civil action against the person accused~~
7 ~~or convicted of the crime.~~

8 ~~—(d)(a) If a person has been convicted of a crime, every person who~~
9 ~~knowingly contracts for, pays or agrees to pay any profit from a crime to~~
10 ~~that person who has been convicted of a crime shall give written notice~~
11 ~~to the board of the payment or obligation to pay as soon as practicable~~
12 ~~after discovering the the payment or intended payment is a profit from a~~
13 ~~crime. The board, upon receipt of notice of a contract, an agreement to~~
14 ~~pay or payment of profits from a crime, shall notify all known eligible~~
15 ~~persons at their last known address of the existence of the profits.~~

16 (b) Notwithstanding any inconsistent provision of law or rules of civil
17 procedure with respect to the timely bringing of an action, any eligible
18 person shall have the right to bring a civil action in a court of competent
19 jurisdiction to recover money damages from a person convicted of a crime
20 or the legal representative of that convicted person within three years of
21 the discovery of any profits from a crime. Any damages awarded in this
22 action shall be recoverable only up to the value of the profits from the
23 crime. If an action is filed under this subsection after the expiration of all
24 other applicable statutes of limitation, any other eligible person must file
25 any action for damages as a result of the crime within three years of the
26 actual discovery of profits from the crime or of actual notice received from
27 or notice published by the board of the discovery, whichever is later. If
28 any profits from a crime remain after the payment of claims made under
29 this section, the board shall have the right to bring a civil action within
30 two years in a court of competent jurisdiction to recover any payments
31 made by the board pursuant to law and any expenses incurred by the
32 board pursuant to this section with regard to such crime or the person
33 convicted of such crime.

34 (c) Upon filing an action under subsection (b), the eligible person shall
35 give notice to the board of the filing by delivering a copy of the complaint
36 to the board. The eligible person may also give notice to the board prior
37 to filing the action so as to allow the board to apply for any appropriate
38 remedies which are otherwise authorized to be invoked prior to the com-
39 mencement of an action.

40 (d) Upon receipt of a notice as provided in this section, the board
41 shall immediately take action as necessary to:

42 (1) Notify all other known eligible persons of the alleged existence of
43 profits from a crime by certified mail, return receipt requested, where the

1 eligible persons' names and addresses are known by the board;

2 (2) publish, at least once a year for three years from the date it is
3 initially notified by an eligible person as provided in this section, a legal
4 notice in newspapers of general circulation in the county wherein the
5 crime was committed and in counties contiguous to that county advising
6 any eligible persons of the existence of profits from a crime. The board
7 may in its discretion provide for additional notice as it deems necessary.

8 (3) Avoid the wasting of the assets identified in the complaint as the
9 newly discovered profits from a crime in any manner consistent with this
10 subsection.

11 (e) The board, acting on behalf of all eligible persons, shall have the
12 right to apply for any and all remedies that are also otherwise available
13 to an eligible person bringing an action under subsection (b). The remedies
14 of attachment, injunction, receivership and notice of pendency available
15 under law to an eligible person bringing an action under subsection (b)
16 shall also be available to the board in all actions under this subsection.
17 On a motion for a remedy, the moving party shall state whether any other
18 remedy has previously been sought in the same action against the same
19 defendant. The court may require the moving party to elect between those
20 remedies to which it would otherwise be entitled.

21 (f) Any action taken by any person convicted of a crime, whether by
22 way of execution of a power of attorney, creation of corporate entities or
23 otherwise, to defeat the purpose of this section shall be null and void as
24 against the public policy of this state.

25 (g) (1) Any person who intentionally fails to submit to the board a
26 copy of the contract described in subsection (a) or pay over to the board
27 any moneys or other consideration as required by law is subject to a civil
28 penalty of not less than \$10,000 for each offense and not more than an
29 amount equal to three times the contract amount.

30 (2) If two or more persons are subject to the penalties provided in
31 this section, the persons shall be jointly and severally liable for the pay-
32 ment of the penalty imposed.

33 (3) After notice and opportunity to be heard is provided, the board
34 may by order assess the penalties described in this section.

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

38 (5) An action to recover a civil penalty assessed under this section
39 may be brought by the board in a court of competent jurisdiction within
40 six years after the cause of action accrues.

41 (6) Any moneys recovered under this subsection shall be paid to the
42 crime victim's compensation board.

43 (h) As used in this act:

- 1 (1) “Board” means the crime victim’s compensation board;
- 2 (2) “convicted” means conviction by entry of a plea of guilty or nolo
3 contendere, conviction after trial and a finding of not guilty and a finding
4 of mental disease or defect pursuant to K.S.A. 22-3221, and amendments
5 thereto ;
- 6 (3) “eligible person” means any of the following persons:
- 7 (A) A victim of the particular crime in question, as “victim” is defined;
- 8 (B) an intervenor in such crime;
- 9 (C) a surviving spouse, parent or child of a deceased victim of or
10 intervenor in such crime; and
- 11 (D) any other person dependent for such person’s support upon a
12 deceased victim of or intervenor in such crime.
- 13 No person who is criminally responsible for the crime in question or
14 was an accomplice of the person who is criminally responsible shall be an
15 eligible person;
- 16 (4) “profit from a crime” means any of the following:
- 17 (A) Any property obtained through or income generated from the
18 commission of a crime of which the defendant was convicted;
- 19 (B) any property obtained by or income generated from the sale, con-
20 version or exchange of proceeds of a crime of which the defendant was
21 convicted, including any gain realized by such sale, conversion or
22 exchange;
- 23 (C) any property which the defendant obtained or income generated
24 as a result of having committed the crime of which the defendant was
25 convicted, including any assets obtained through the use of unique knowl-
26 edge obtained during the commission of or in preparation for the com-
27 mission of the crime, as well as any property obtained by or income gen-
28 erated from the sale, conversion or exchange of such property and any
29 gain realized by such sale, conversion or exchange;
- 30 (D) the sale of any item the value of which is increased by the noto-
31 riety gained from the conviction of an offense by the person convicted of
32 the crime; and
- 33 (E) income any person other than a person convicted of a crime or
34 the person’s representative or assignee receives from the sale of an item
35 described by subsection (g)(4)(D).
- 36 (i) For purposes of this section and a civil action for money damages
37 filed hereunder, the limitations imposed on money damages in K.S.A. 60-
38 1903, K.S.A. ~~1992-Supp.~~ 60-19a01 and subsection (e) of K.S.A. ~~1992~~
39 ~~Supp.~~ 60-3701, and amendments thereto, shall not apply.
- 40 Sec. 2. K.S.A. 74-7320 is hereby amended to read as follows: 74-
41 7320. Upon the receipt of any moneys pursuant to K.S.A. 74-7319 and
42 amendments thereto, the crime victims compensation board shall deposit
43 the entire amount in a separate escrow account to be used only as follows:

1 ~~—(a) Upon dismissal of charges against the accused person or upon~~
2 ~~acquittal of the accused person, the board shall promptly pay the entire~~
3 ~~amount to such person, or such person's representatives or assignees.~~

4 ~~—(b) Upon conviction of the accused person or if the accused person~~
5 ~~has already been convicted, provided in this section.~~ The board shall
6 promptly distribute the entire amount and any future moneys paid to the
7 board under K.S.A. 74-7319 and amendments thereto as follows:

8 (1) First, to pay any restitution ordered by the court or by the Kansas
9 parole board to be paid by the convicted person to the person directed
10 by the court or board;

11 (2) if any moneys remain after payment pursuant to subsection (b)(1),
12 to repay any amount expended by the state board of indigents' defense
13 services on behalf of the convicted person in defending prosecution for
14 the crime, including appeals;

15 (3) if any moneys remain after payment pursuant to subsections (b)(1)
16 and (2), to pay any court costs assessed against the convicted person in
17 proceedings for prosecution for the crime, including appellate
18 proceedings;

19 (4) if any moneys remain after payment pursuant to subsections
20 (b)(1), (2) and (3), to pay compensation pursuant to K.S.A. 74-7321 and
21 amendments thereto; and

22 (5) if any moneys remain after payment pursuant to subsections
23 (b)(1), (2), (3) and (4), to pay crime victims compensation pursuant to
24 K.S.A. 74-7301 through 74-7318 and amendments thereto, for which pur-
25 pose such moneys shall be deposited in the state treasury and credited to
26 the state general fund.

27 Sec. 3. K.S.A. 74-7319 and 74-7320 are hereby repealed.

28 Sec. 4. This act shall take effect and be in force from and after its
29 publication in the statute book.

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