

House Bill 1249

By: Representatives Barnard of the 121st, Post 1, Greene of the 134th, DeLoach of the 127th,
Snow of the 1st, Keen of the 146th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 14 of Title 17 of the Official Code of Georgia Annotated, relating to
2 restitution and distribution of profits to victims of crimes, so as to change provisions relating
3 to payment into escrow of moneys otherwise payable to those accused and convicted of
4 crimes; to provide that such escrow shall apply to any moneys above a certain amount; to
5 provide for the holding of moneys in escrow for the benefit of victims of crimes under certain
6 circumstances; to provide for extending periods of limitation and reviving barred causes of
7 action when moneys are so paid into escrow; to provide for liability for failure to properly
8 remit moneys; to provide for related matters; to provide for an effective date and state
9 legislative intent with respect to applicability; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 14 of Title 17 of the Official Code of Georgia Annotated, relating to restitution and
14 distribution of profits to victims of crimes, is amended by striking Article 2 and inserting in
15 its place a new article to read as follows:

16 style="text-align:center">"ARTICLE 2

17 17-14-30.

18 As used in this article, the term:

19 (1) 'Board' means the Board of Corrections.

20 (2) 'Convicted person' includes a person found not guilty by reason of insanity.

21 (3) 'Victim' means any natural person or his or her personal representative or any firm,
22 partnership, association, public or private corporation, or governmental entity suffering
23 damages caused by an offender's unlawful act.

1 17-14-31.

2 (a)(1)(A) Every person, firm, corporation, partnership, association, or other legal entity
3 contracting with any person or with the representative or assignee of any person who
4 has been accused or convicted of a crime in this state with respect to the reenactment
5 of the crime by way of a movie, book, magazine article, tape recording, phonograph
6 record, radio or television presentation, or live entertainment of any kind or with respect
7 to the expression of the accused or convicted person's thoughts, feelings, opinions, or
8 emotions regarding the crime shall submit a copy of the contract to the board and shall
9 pay over to the board any moneys which would otherwise, by the terms of the contract,
10 be owing to the accused or convicted person or to his or her representatives.

11 (B) Every person, firm, corporation, partnership, association, or other legal entity,
12 including any unit of state or local government, which is otherwise obligated to pay any
13 moneys in excess of \$5,000.00 to any person who has been accused or convicted of a
14 crime in this state and is in the custody of the Department of Corrections or under
15 supervision by the state probation system or the state parole system or the
16 representative or assignee of such person shall pay over to the board any such moneys
17 which would be otherwise owing to the accused or convicted person or to his or her
18 representatives.

19 (2) The board shall deposit such moneys in an escrow account for the benefit of and
20 payable to any victim or the legal representative of any victim of crimes committed by
21 the accused or convicted person; provided, however, that with respect to moneys received
22 under subparagraph (a)(1)(B) of this Code section, if the board determines that there were
23 no victims of the crime, the board shall not deposit such moneys into escrow but shall
24 instead pay such moneys over to the person accused or convicted of the crime or to his
25 or her representatives.

26 (3)(A) Payments may be made pursuant to paragraph (2) of this subsection only if the
27 accused person is eventually convicted or enters a plea of guilty of the crime and if the
28 victim, within five years of the date of the establishment of the escrow account, brings
29 a civil action in a court of competent jurisdiction and recovers a money judgment for
30 damages against the convicted or accused person or his or her representatives.

31 (B) Notwithstanding any other provision of law, a civil action against a person accused
32 or convicted of a crime may be brought within five years after a payment to the board
33 of moneys otherwise payable to such person or his or her representatives if the civil
34 action arises out of or is substantially related to the crime of which such person is
35 accused or convicted; and this five-year period shall serve either to extend any
36 otherwise applicable period of limitations or to revive any otherwise expired claim.

- 1 (4) It shall be the duty of the victim, the victim's attorney, or the victim's representative
2 to notify the board within 30 days of the filing of any claim under this article.
- 3 (b) At least once every six months for five years from the date it receives such moneys,
4 the board shall cause to have published a legal notice in newspapers of general circulation
5 in the county in which the crime was committed and in counties contiguous to such county,
6 advising victims of the crime that escrow moneys are available to satisfy money judgments
7 pursuant to this Code section.
- 8 (c) Upon dismissal of charges or acquittal of any accused person, the board shall
9 immediately pay over to the accused person the moneys in the escrow account established
10 on behalf of the accused person.
- 11 (d) Upon a showing by any convicted person that five years have elapsed from the
12 establishment of the escrow account and that no actions are pending against the convicted
13 person pursuant to this Code section, the board shall immediately pay over any moneys in
14 the escrow account to the person or his or her legal representatives.
- 15 (e) Whenever it is found that a person accused of a crime is unfit to proceed to trial as a
16 result of insanity because the person lacks capacity to understand the proceedings against
17 him or her or to assist in his or her own defense, the board shall bring an action of
18 interpleader to determine the disposition of the escrow account.
- 19 (f) Any excess which remains in the escrow account or is deposited into the account after
20 all money judgments have been satisfied shall be paid over into the state treasury as
21 compensation for the establishment, administration, and execution of this article.
- 22 (g) The board shall make payments from the escrow account to any person accused or
23 convicted of crime, upon the order of a court of competent jurisdiction, after a showing by
24 the person that the moneys shall be used for the exclusive purpose of retaining legal
25 representation at any stage of the proceedings against the person, including the appeals
26 process.
- 27 (h) The board shall disburse payments from the escrow account on a pro rata basis of all
28 claims filed, according to the amount of money in the escrow account as compared to the
29 amount of each claim. The sums are not to be disbursed until all pending claims have been
30 settled or reduced to judgment.
- 31 (i) Any action taken by a person who is accused or convicted of a crime or who enters a
32 plea of guilty, whether by way of execution of a power of attorney, creation of corporate
33 entities, or otherwise, to defeat the purpose of this Code section shall be null and void as
34 against the public policy of this state.

1 17-14-32.

2 (a) It shall be unlawful for any person, firm, corporation, partnership, association, or other
3 legal entity to fail to comply with this article.

4 (b) Any person, firm, corporation, partnership, association, or other legal entity violating
5 this article shall be guilty of a misdemeanor and shall additionally be civilly liable to any
6 crime victim for any monetary loss suffered by the crime victim as a result of such failure
7 to comply.

8 (c) Each day that a person, firm, corporation, partnership, association, or other legal entity
9 continues in violation of this article shall constitute a separate offense."

10 **SECTION 2.**

11 This Act shall become effective July 1, 2004. This Act shall apply with respect to offenses
12 committed prior to, on, or after July 1, 2004. It is further the express intention of the General
13 Assembly that the provisions of subparagraph (a)(3)(B) of Code Section 17-14-31, as enacted
14 by this Act, shall to the maximum extent constitutionally permissible be applied retroactively
15 to claims arising prior to July 1, 2004, as well as to claims otherwise barred prior to July 1,
16 2004.

17 **SECTION 3.**

18 All laws and parts of laws in conflict with this Act are repealed.