

SENATE No. 1407

By Mr. Keating, a petition of William R. Keating, Frederick E. Berry, W. Paul White, Louis L. Kafka and other members of the House of Representatives for legislation to restrict proceeds received by criminals as a result of notoriety achieved through the commission of a crime. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT RELATIVE TO RESTRICTING PROCEEDS RECEIVED BY CRIMINALS AS A RESULT OF NOTORIETY ACHIEVED THROUGH THE COMMISSION OF A CRIME.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 258A of the General Laws, as appearing
2 in the 1986 Official Edition, is hereby amended by adding the
3 following text to Section 1: —

4 For the purpose of section eight of this chapter the following
5 words shall have the following meanings, unless the context
6 otherwise requires: —

7 “Account”, An interest-bearing account established in the name
8 of the defendant and the state treasurer into which payments
9 received by state treasurer in the name of the defendant are
10 deposited under the Act’s provision:

11 “Contract,” An agreement entered into by, or on behalf of, a
12 defendant in which the defendant agrees to recount any aspect
13 of the crime reenactment or publicity in any form, including but
14 not limited to any movie, television broadcast, photograph, book,
15 play, interview, article, lecture or recording, in exchange for
16 monetary or other remuneration;

17 “Court,” The Superior Court for the district in which the crime
18 was committed;

19 “Defendant,” A person charged with or convicted of a crime;

20 “Victim,” A person, firm, corporation, partnership, association,
21 or the commonwealth or any political subdivision thereof, who
22 suffers personal physical, financial or emotional harm or loss
23 resulting from a crime; the parent, child, spouse, next of kin or
24 legal representative of a deceased victim; or the parent, guardian
25 or custodian of an incapacitated or minor victim;
26 “Crime,” Any felony or misdemeanor committed in the
27 Commonwealth.

1 SECTION 2. Chapter 258A of the General Laws, as appearing
2 in the 1986 Official Edition, is hereby amended in Section 8 by
3 striking everything after the title and inserting in place thereof the
4 following new text:

5 Any person, firm, corporation, partnership, association or
6 other legal entity who enters into a contract with the defendant
7 or representative or agent of the defendant with respect to the
8 reenactment of such crime, by way of a movie, book, magazine
9 article, radio or television presentation, live entertainment of any
10 kind, or from the expression of such person’s thoughts, feelings,
11 opinions or emotions regarding such crime, shall: —

12 (A) Within ten days of the execution of said contract provide
13 a copy of the contract to the Attorney General, the prosecuting
14 District Attorney, if any, and the state treasurer, and;

15 (B) Pay all remuneration due the defendant or the representa-
16 tive or agent of the defendant under the terms of the contract to
17 the state treasurer until notified by the state treasurer that this
18 Act no longer applies to the contract.

19 The responsibilities and authority of the state treasurer,
20 attorney general and the district attorney under Section 8 of
21 chapter 258A are as follows: —

22 (A) The state treasurer shall administer the accounts established
23 under this Act’s provisions and shall make disbursements from
24 the account, as provided by this act.

25 (B) Upon receipt of a contract, the state attorney general and
26 the prosecuting district attorney shall: —

27 (1) Make a reasonable attempt to ascertain the victims who may
28 be entitled to payments derived from the contract, and notify these
29 victims individually of the general provisions of the contract and
30 of this Act, and

31 (2) Publish in a newspaper of general circulation in the district
32 in which the crime was committed a notice about receipt of the
33 contract and the general provisions of this Act. The notice shall
34 include the name of the defendant, the crime for which the
35 defendant has been charged and/or convicted, the date and place
36 of the crime and the status of the case. It shall not include the
37 name or address of victims.

38 (C) Upon receiving an initial payment under a contract, the state
39 treasurer shall establish an account in the name of the defendant
40 and the state treasurer. The state treasurer shall deposit all
41 payments received under the contract into the account.

42 (D) The state treasurer shall maintain records on each account
43 and, upon request, furnish information about the status of the
44 account to the: defendant, the victim, the attorney general or the
45 district attorney and any court with jurisdiction over the
46 defendant.

47 (E) The state treasurer shall make disbursements from the
48 account and close the account in accordance with subsection two
49 and three of this Act.

50 (F) The Attorney General or District Attorney of the District
51 in which the crime was committed may bring a civil action in the
52 court to compel compliance with this Act through injunctive relief
53 or any other means the court deems necessary.

54 Section 1. Procedure and burden of proof under this section
55 shall be as follows: —

56 (A) Notwithstanding any inconsistent law regarding the timely
57 filing of a civil action, at any time up to five years from the date
58 the account has been established, a victim may initiate a civil
59 action against the defendant or his representative for recovery of
60 damages relative to personal, physical, financial or emotional
61 injuries and property loss resulting from the crime or crimes giving
62 rise to a contract.

63 (B) Evidence of an order requiring the defendant to make
64 restitution to the victim as part of the disposition of a criminal
65 prosecution shall be prima facie evidence of liability under this
66 chapter.

67 (C) The standard of proof in the civil action commended by
68 the victim shall be that of a preponderance of the evidence.

69 (D) No disbursement shall be made from this account except
70 until as provided in subsection 2 of this Act, until 5 years have
71 passed since the creation of said account.

72 (E) Immediately upon a finding of guilty or not guilty or a
73 dismissal or other final disposition of the charges against the
74 defendant, the attorney general and/or district attorney shall
75 inform the state treasurer and the court of the outcome of the case.

76 Section 2. Court direction of disbursements from the account
77 shall be as follows: —

78 (A) All disbursements from the account shall be made as
79 directed by the court in which the action brought under subsection
80 6(A) is pending to the extent funds are available in the account
81 pursuant to this Act.

82 (B) If the defendant is found not guilty or the charges against
83 the defendant are dismissed or a nolle prosequi, and the period
84 during which the Commonwealth may appeal interlocutory orders
85 terminating prosecution has lapsed, the state treasurer shall
86 immediately pay over to the defendant all funds in the account,
87 and close the account.

88 (C) The state treasurer shall make no disbursements from the
89 account until the defendant is found guilty and the direct appeal,
90 if any, results in an affirmance of the conviction for the crime,
91 or if no appeal is filed and the time has lapsed for filing a direct
92 appeal.

93 (D) The court may direct the state treasurer to disburse from
94 the account:

95 (1) amounts to satisfy a civil judgment which the victim has
96 obtained against the defendant based on financial, physical, or
97 emotional injury or property loss resulting from the crime; and

98 (2) amounts to satisfy an order of unpaid restitution imposed
99 on the defendant pursuant to a disposition of any complaint or
100 indictment resulting from the crime or crimes which gave rise to
101 the contract; and

102 (3) an amount to be paid under an order imposed by the court
103 in accordance with sections eight and nine of chapter two hundred
104 and fifty-eight B of the General Laws.

105 (E) If more than one victim obtains a judgment pursuant to this
106 Act and the funds in the account are insufficient to satisfy the total

107 judgments ordered, the state treasurer shall pay each victim an
108 amount equal to the percentage each victim's unpaid judgment
109 bears to the total amount of the unpaid judgments.

110 Section 3. Closure of this account shall occur as follows: —

111 (A) The state treasurer shall close the account and distribute
112 50% of the remaining funds to the victim of violent crime
113 compensation fund, established under section 52 of chapter 10 of
114 the General Laws and 50% to the defendant if

115 (1) five years have passed since the creation of the account; and

116 (2) full satisfaction has been made for all disbursements directed
117 to be satisfied from the account under subsection two, or partial
118 satisfaction has been made to the extent of the total amount of
119 funds payable to the defendant under the contract less any other
120 disbursements made under subsection two of this Act; and

121 (3) provided that the account shall not be closed until any cause
122 of action which may result in a claim against the account and
123 which has been filed by a victim in the court within five years
124 following the creation of the account has been resolved.

125 (B) Immediately upon closing the account, the state treasurer
126 shall inform the party contracting with the defendant that the Act
127 no longer applies to the contract.

128 Any action taken by a defendant, any party contracting with
129 the defendant, or their agents or representatives, whether by way
130 of execution of a power of attorney, creation of corporate entities
131 or otherwise, to defeat the purpose of this chapter shall be null
132 and void as against the public policy of this state.

1 SECTION 3. SEVERABILITY.

2 The provisions of this Act are severable and if any such
3 provision or provisions shall be held invalid by any decision of
4 any court of competent jurisdiction, such decision or decisions
5 shall not impair or otherwise affect any other provision of this
6 Act.

1 SECTION 4. This act shall apply to all contracts entered into
2 on or after January 10, 1978.

1 SECTION 5. ESTABLISHING A VICTIMS OF VIOLENT
2 CRIME COMPENSATION FUND.

3 Chapter ten of the General Laws, is hereby amended by
4 inserting after section fifty-one the following new section: —

5 Section 52. There shall be established on the books of the
6 commonwealth a separate fund to be known as the “Victims of
7 Violent Crime Compensation Fund,” consisting of revenues
8 received under the provisions of section eight of chapter two
9 hundred and fifty-eight A, and all other credited or transferred
10 thereto from any other fund or source pursuant to the law.

11 The state treasurer shall receive, deposit and invest all monies
12 transmitted to him or her under the provisions of this section in
13 such manner that will insure the highest interest rate available
14 consistent with safety of the fund and with the requirement that
15 monies transmitted to the state treasurer pursuant to section eight
16 of chapter two hundred and fifty-eight A be available for
17 immediate withdrawal for payment in accordance with said
18 chapter.

19 The state treasurer shall carry out his responsibilities relative
20 to such fund in accordance with chapter two hundred and fifty-
21 eight A, section eight.

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

SUBJECT : [Illegible]

[Illegible]

1. [Illegible]

[Illegible]

2. [Illegible]

[Illegible]

3. [Illegible]

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4. [Illegible]

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5. [Illegible]

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