

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 891
PROPOSED COMMITTEE SUBSTITUTE H891-PCS10395-RN-34

Short Title: Exploitation of Srs/Freeze Defendant's Assets.

(Public)

Sponsors:

Referred to:

April 15, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE DISTRICT ATTORNEY TO PETITION THE COURT TO
3 FREEZE THE ASSETS OF A DEFENDANT CHARGED WITH FINANCIAL
4 EXPLOITATION OF AN ELDER ADULT OR DISABLED ADULT AND TO
5 ESTABLISH A PROCEDURE TO PETITION FOR THE FREEZING OR SEIZURE OF
6 THE DEFENDANT'S ASSETS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 14-112.2 is amended by adding a new subsection to read:

9 "(f) If a person is charged with a violation of this section that involves funds, assets, or
10 property valued at more than five thousand dollars (\$5,000), the district attorney may file a
11 petition in the pending criminal proceeding before the court with jurisdiction over the pending
12 charges to freeze the funds, assets, or property of the defendant in an amount up to one hundred
13 fifty percent (150%) of the alleged value of funds, assets, or property in the defendant's pending
14 criminal proceeding for purposes of restitution to the victim. The standard of proof required to
15 freeze the defendant's funds, assets, or property shall be by clear and convincing evidence. The
16 procedure for petitioning the court under this subsection shall be governed by G.S. 14-112.3."

17 **SECTION 2.** Article 19 of Chapter 14 of the General Statutes is amended by
18 adding the following new section to read:

19 **"§ 14-112.3. Asset freeze or seizure; proceeding.**

20 (a) For purposes of this section, the term "assets" includes funds and property as well as
21 other assets that may be involved in a violation of G.S. 14-112.2.

22 (b) Whenever it appears by clear and convincing evidence that any defendant is about
23 to or intends to divest himself or herself of assets in a manner that would render the defendant
24 insolvent for purposes of restitution, the district attorney may make an application to the court
25 with jurisdiction over the pending charges to freeze or seize the assets of the defendant. Upon a
26 showing by clear and convincing evidence in the hearing, the court shall issue an order to
27 freeze or seize the assets of the defendant in the amount calculated pursuant to
28 G.S. 14-112.2(f). The procedure for petitioning the court under this section shall be governed
29 by G.S. 1A-1, Rule 65, except as otherwise provided in this section.

30 (c) At any time after service of the order to freeze or seize assets, the defendant or any
31 person claiming an interest in the assets may file a motion to release the assets.

32 (d) In any proceeding to release assets, the burden of proof shall be by clear and
33 convincing evidence and shall be on the State to show that the defendant is about to, intends to,
34 or did divest himself or herself of assets in a manner that would render the defendant insolvent
35 for purposes of restitution. If the court finds that the defendant is about to, intends to, or did
36 divest himself or herself of assets in a manner that would render the defendant insolvent for



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1 purposes of restitution, the court shall order the assets frozen or held until further order of the
2 court. The rules of evidence that apply to this proceeding are the rules that would apply in a
3 proceeding pursuant to G.S. 1A-1, Rule 65.

4 (e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary
5 dismissal by the State or if a judgment of acquittal is entered, the court shall vacate the order to
6 freeze or seize the assets.

7 (f) Any person holding any interest in the frozen or seized assets may commence a
8 separate civil proceeding in the manner provided by law."

9 **SECTION 3.** This act becomes effective October 1, 2013, and applies to offenses
10 committed on or after that date.