

HOUSE No. 1326

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to profits from 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. The General Laws, as appearing in the 2006 Official Edition, are hereby
2 amended by inserting after chapter 258C.13 the following new chapter as chapter 258C.14:-

3 CHAPTER 258C.14.

4 An Act Relative to Profits from Crime.

5 Section 1. The following words as used in this section shall have the following
6 meanings, unless the context otherwise requires:

7 "Contracting party", any person, firm, corporation, partnership, association or other
8 legal entity which contracts for, pays, or agrees to pay a defendant consideration which it knows
9 or reasonably should know may

10 constitute proceeds related to a crime.

11 "Conviction", whether or not a sentence is imposed, a finding or verdict of guilty or
12 of not guilty by reason of insanity, a plea of guilty, or an adjudication of delinquency or of
13 youthful offender status as defined in
14 section 52 of chapter 119.

15 "Crime", any violation of Massachusetts law that is punishable by imprisonment in
16 state prison and any federal offense committed in the commonwealth that is punishable by death
17 or imprisonment for a term of more than 1 year. Crime shall also include any offense committed
18 by a juvenile which would be a crime as defined herein if the juvenile were an adult.

19 "Defendant", a person who is the subject of pending criminal charges or has been
20 convicted of a crime

21 "Division", the division of victim compensation and assistance within the department
22 of the attorney general.

23 "Proceeds related to a crime", any assets, material objects, monies, and property
24 obtained through the use of unique knowledge or notoriety acquired by means and in
25 consequence of the commission of a crime from whatever source received by or owing to a
26 defendant or his representative, whether earned, accrued, or paid before or after the disposition
27 of criminal charges against
28 the defendant.

29 "Victim", any natural person who suffers physical, emotional or financial harm, or the
30 threat of physical, emotional or financial harm as the result of the commission of a crime, and the
31 estate, legal guardian, and other

32 family members of such person.

33 Section 2. A contracting party shall, within 30 days of the agreement or 30 days
34 before a payment, submit to the division a copy of its contract or a summary of the terms of any
35 oral agreement or payment.

36 Section 3. Within 30 days from the receipt of a contract, agreement or notice of
37 payment to a defendant or his representative, or upon its own initiative if no contract or
38 agreement or notice is submitted, the division

39 shall determine whether the terms of the contract or agreement or payment include
40 proceeds related to a crime as defined in section 1, and, if so, whether such proceeds are
41 substantially related to a crime, rather than relating only tangentially to, or containing only
42 passing references to, a crime.

43 Section 4. Within 15 days of the determination required by section 3, the division
44 shall notify the contracting party of its determinations by certified mail.

45 Section 5. A contracting party aggrieved by the division's determination under
46 section 3 may request reconsideration of the determination by the program director. Such request
47 for reconsideration must be filed within 15 days of the date of mailing of the notice of the
48 division's determination. The division shall notify the contracting party by certified mail of the
49 determination upon reconsideration within 20 days of the request for reconsideration. Such
50 notice shall include information regarding the contracting party's right to a petition for judicial
51 review of the determination of the program director in accordance with section 14 of chapter

52 30A.

53 Section 6. If the provisions of section 2 are violated, the division may petition the
54 superior court for an order of enforcement. Such action shall be brought in the county in which
55 the defendant resides, the county in which the crime was committed, or in Suffolk County. Upon
56 a finding that a contracting party has violated either sections 2 the court shall, in addition to any
57 other relief, order that an appropriate amount of money or other consideration be paid to, or an
58 appropriate bond be posted with, the division, or impose on the contracting party a civil penalty
59 of the value of the contract or agreement. If the court finds such violation to have been knowing
60 or willful, it shall impose a civil penalty up to 3, but not less than 2, times the value of the
61 contract or agreement. To the extent monies or other consideration received by the division as a
62 result of such order exceed the value of the contract or agreement, they shall be deposited into
63 the victim compensation fund maintained by the attorney general in accordance with section 4(c)
64 of chapter 258C.

65 Section 7. The division, upon receipt of a contract or other agreement to pay or
66 notice of payment to a defendant, shall take reasonable steps to notify all known victims of the
67 crime about the existence of a contract, agreement or notice of payment. Notifications shall be
68 made by certified mail to the victim's last known address. The division shall also provide
69 publication in a newspaper of general circulation in the county in which the crime was
70 committed to publicize the existence of proceeds related to the crime. Such notice shall be made
71 by the division once every 6 months for 1 year from the date of receipt of the contract, agreement
72 or notice of payment. The division may provide for such additional notice as it deems necessary.
73 Failure to notify a victim, as required herein, or failure on the part of the division to take any
74 other action required by this chapter, shall not result in the imposition of liability on the division
75 or any division employee.

76 Section 8. Notwithstanding any other provision of the General Laws with respect to
77 the timely commencement of an action, including, but not limited to, section 2A of chapter 260
78 of the General Laws and section 2 of chapter 229 of the General Laws, any victim shall also have
79 the right to bring a civil action to recover money damages from a defendant or his representative
80 within 3 years of the last mandatory publication provided for in section 7.

81 Section 9. In order to make the determinations required by section 3, or to determine
82 whether any provision of this chapter is being violated or to make any other determination
83 required by this chapter, the division shall be authorized to issue written civil investigative
84 demands which may be served by certified mail, and which shall be returned within 15 days
85 from the date of service. Whenever a person fails to comply with a civil investigative demand
86 served on him pursuant to this section, the division may petition the superior court for an order of
87 enforcement. Such action shall be brought in the county in which the defendant resides, the
88 county in which the crime was committed, or in Suffolk County.

89 Section 10. The division shall have the right to apply for any remedies available
90 under civil practice law and rules that are appropriate to furthering the purpose of this chapter.

91 Section 11. Any action taken by a defendant, or his representative, whether by way of
92 execution of a power of attorney, creation of corporate entities or otherwise, that results in
93 defeating the purpose of this chapter shall be null and void.

94 Section 12. The division shall have the authority to promulgate rules and regulations
95 pursuant to chapter 30A as may be necessary to carry out the provisions of this chapter.

96 SECTION 13. Section 2A of chapter 260 of the General. Laws is hereby amended by
97 inserting after the first sentence the following sentence: - Actions for torts against a criminal

98 defendant by the victim as defined by section 1 of chapter 258C.14 shall be tolled during any
99 period of incarceration, parole or probation of the defendant for the crime committed against the
100 victim.