

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 9

Short Title: Embezzlement/Increase Penalty.

(Public)

Sponsors: Senators Miller; Albertson, Cochrane, Cooper, Dalton, Gulley, Jordan, Lee, Lucas, Odom, Perdue, Plyler, Rand, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY
ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE
CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-74 reads as rewritten:

"§ 14-74. Larceny by servants and other employees.

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in the following section [G.S. 14-75], by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be ~~punished as a Class H felon;~~ guilty of a felony: Provided, that nothing contained in this

1 section shall extend to apprentices or servants within the age of 16 years. Larceny or
2 embezzlement by servants and other employees of money, goods, or other chattels, or any
3 of the articles, securities, or choses in action mentioned in G.S. 14-75, with the value of
4 one hundred thousand dollars (\$100,000) or more is a Class C felony. Larceny or
5 embezzlement by servants and other employees of money, goods, or other chattels, or any
6 of the articles, securities, or choses in action mentioned in G.S. 14-75, with the value of
7 less than one hundred thousand dollars (\$100,000) is a Class H felony."

8 Section 2. G.S. 14-90 reads as rewritten:

9 **"§ 14-90. Embezzlement of property received by virtue of office or employment.**

10 If any person exercising a public trust or holding a public office, or any guardian,
11 administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or
12 agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons
13 under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and
14 willfully misapply or convert to his own use, or shall take, make away with or secrete,
15 with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to
16 his own use any money, goods or other chattels, bank note, check or order for the
17 payment of money issued by or drawn on any bank or other corporation, or any treasury
18 warrant, treasury note, bond or obligation for the payment of money issued by the United
19 States or by any state, or any other valuable security whatsoever belonging to any other
20 person or corporation, unincorporated association or organization which shall have come
21 into his possession or under his care, he shall be ~~punished as a Class H felon.~~ guilty of a
22 felony. Embezzlement of property with the value of one hundred thousand dollars
23 (\$100,000) or more, received by virtue of office or employment, is a Class C felony.
24 Embezzlement of property with the value of less than one hundred thousand dollars
25 (\$100,000), received by virtue of office or employment, is a Class H felony."

26 Section 3. G.S. 14-91 reads as rewritten:

27 **"§ 14-91. Embezzlement of State property by public officers and employees.**

28 If any officer, agent, or employee of the State, or other person having or holding in
29 trust for the same any bonds issued by the State, or any security, or other property and
30 effects of the same, shall embezzle or knowingly and willfully misapply or convert the
31 same to his own use, or otherwise willfully or corruptly abuse such trust, such offender
32 and all persons knowingly and willfully aiding and abetting or otherwise assisting therein
33 shall be ~~punished as a Class F felon.~~ guilty of a felony. Embezzlement of State property
34 with the value of one hundred thousand dollars (\$100,000) or more by public officers and
35 employees is a Class C felony. Embezzlement of State property with the value of less
36 than one hundred thousand dollars (\$100,000) by public officers and employees is a Class
37 F felony."

38 Section 4. G.S. 14-92 reads as rewritten:

39 **"§ 14-92. Embezzlement of funds by public officers and trustees.**

40 If an officer, agent, or employee of an entity listed below, or a person having or
41 holding money or property in trust for one of the listed entities, shall embezzle or
42 otherwise willfully and corruptly use or misapply the same for any purpose other than
43 that for which such moneys or property is held, such person shall be ~~punished as a Class F~~

1 ~~felon~~-guilty of a felony. Embezzlement of money or property with the value of one
2 hundred thousand dollars (\$100,000) or more by public officers and trustees is a Class C
3 felony. Embezzlement of money or property with the value of less than one hundred
4 thousand dollars (\$100,000) by public officers and trustees is a Class F felony. If any
5 clerk of the superior court or any sheriff, treasurer, register of deeds or other public
6 officer of any county, unit or agency of local government, or local board of education
7 shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply
8 for any purpose other than that for which the same are held, or shall fail to pay over and
9 deliver to the proper persons entitled to receive the same when lawfully required so to do,
10 any moneys, funds, securities or other property which such officer shall have received by
11 virtue or color of his office in trust for any person or corporation, such officer shall be
12 ~~punished as a Class F felon~~-guilty of a felony. Embezzlement of money, funds, securities,
13 or other property with the value of one hundred thousand dollars (\$100,000) or more by
14 public officers and trustees is a Class C felony. Embezzlement of money, funds,
15 securities, or other property with the value of less than one hundred thousand dollars
16 (\$100,000) by public officers and trustees is a Class F felony. The provisions of this
17 section shall apply to all persons who shall go out of office and fail or neglect to account
18 to or deliver over to their successors in office or other persons lawfully entitled to receive
19 the same all such moneys, funds and securities or property aforesaid. The following
20 entities are protected by this section: a county, a city or other unit or agency of local
21 government, a local board of education, and a penal, charitable, religious, or educational
22 institution."

23 Section 5. G.S. 14-93 reads as rewritten:

24 "**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

25 If any treasurer or other financial officer of any benevolent or religious institution,
26 society or congregation shall lend any of the moneys coming into his hands to any other
27 person or association without the consent of the institution, association or congregation to
28 whom such moneys belong; or, if he shall fail to account for such moneys when called
29 on, he shall be guilty of a ~~Class H~~-felony. Embezzlement by treasurers of charitable and
30 religious organizations of money with the value of one hundred thousand dollars
31 (\$100,000) or more is a Class C felony. Embezzlement by treasurers of charitable and
32 religious organizations of money with the value of less than one hundred thousand dollars
33 (\$100,000) is a Class H felony."

34 Section 6. G.S. 14-94 reads as rewritten:

35 "**§ 14-94. Embezzlement by officers of railroad companies.**

36 If any president, secretary, treasurer, director, engineer, agent or other officer of any
37 railroad company shall embezzle any moneys, bonds or other valuable funds or securities,
38 with which such president, secretary, treasurer, director, engineer, agent or other officer
39 shall be charged by virtue of his office or agency, or shall in any way, directly or
40 indirectly, apply or appropriate the same for the use or benefit of himself or any other
41 person, state or corporation, other than the company of which he is president, secretary,
42 treasurer, director, engineer, agent or other officer, for every such offense the person so
43 offending shall be guilty of a felony, and on conviction in the superior or criminal court

1 of any county through which the railroad of such company shall pass, shall be punished
2 as a ~~Class H~~-felon. Embezzlement by officers of railroad companies of money, bonds, or
3 other valuable funds or securities with the value of one hundred thousand dollars
4 (\$100,000) or more is a Class C felony. Embezzlement by officers of railroad companies
5 of money, bonds, or other valuable funds or securities with the value of less than one
6 hundred thousand dollars (\$100,000) is a Class H felony."

7 Section 7. G.S. 14-97 reads as rewritten:

8 **"§ 14-97. Appropriation of partnership funds by partner to personal use.**

9 Any person engaged in a partnership business in the State of North Carolina who
10 shall, without the knowledge and consent of his copartner or copartners, take funds
11 belonging to the partnership business and appropriate the same to his own personal use
12 with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of
13 a ~~Class H~~-felony. Appropriation of partnership funds with the value of one hundred
14 thousand dollars (\$100,000) or more by a partner is a Class C felony. Appropriation of
15 partnership funds with the value of less than one hundred thousand dollars (\$100,000) by
16 a partner is a Class H felony."

17 Section 8. G.S. 14-98 reads as rewritten:

18 **"§ 14-98. Embezzlement by surviving partner.**

19 If any surviving partner shall willfully and intentionally convert any of the property,
20 money or effects belonging to the partnership to his own use, and refuse to account for
21 the same on settlement, he shall be ~~punished as a Class H felon~~-guilty of a felony.
22 Embezzlement by a surviving partner of property, money, or effects with the value of one
23 hundred thousand dollars (\$100,000) or more is a Class C felony. Embezzlement by a
24 surviving partner of property, money, or effects with the value of less than one hundred
25 thousand dollars (\$100,000) is a Class H felony."

26 Section 9. G.S. 14-99 reads as rewritten:

27 **"§ 14-99. Embezzlement of taxes by officers.**

28 If any officer appropriates to his own use the State, county, school, city or town taxes,
29 he shall be guilty of embezzlement, and shall be punished as a ~~Class F~~-felon.
30 Embezzlement of taxes with the value of one hundred thousand dollars (\$100,000) or
31 more by officers is a Class C felony. Embezzlement of taxes with the value of less than
32 one hundred thousand dollars (\$100,000) by officers is a Class F felony."

33 Section 10. G.S. 14-100(a) reads as rewritten:

34 "(a) If any person shall knowingly and designedly by means of any kind of false
35 pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a
36 future fulfillment or event, obtain or attempt to obtain from any person within this State
37 any money, goods, property, services, chose in action, or other thing of value with intent
38 to cheat or defraud any person of such money, goods, property, services, chose in action
39 or other thing of value, such person shall be guilty of a ~~felony, and shall be punished as a~~
40 ~~Class H felon~~-felony: Provided, that if, on the trial of anyone indicted for such crime, it
41 shall be proved that he obtained the property in such manner as to amount to larceny or
42 embezzlement, the jury shall have submitted to them such other felony proved; and no
43 person tried for such felony shall be liable to be afterwards prosecuted for larceny or

1 embezzlement upon the same facts: Provided, further, that it shall be sufficient in any
2 indictment for obtaining or attempting to obtain any such money, goods, property,
3 services, chose in action, or other thing of value by false pretenses to allege that the party
4 accused did the act with intent to defraud, without alleging an intent to defraud any
5 particular person, and without alleging any ownership of the money, goods, property,
6 services, chose in action or other thing of value; and upon the trial of any such
7 indictment, it shall not be necessary to prove either an intent to defraud any particular
8 person or that the person to whom the false pretense was made was the person defrauded,
9 but it shall be sufficient to allege and prove that the party accused made the false pretense
10 charged with an intent to defraud. Obtaining property with the value of one hundred
11 thousand dollars (\$100,000) or more by false pretenses is a Class C felony. Obtaining
12 property with the value of less than one hundred thousand dollars (\$100,000) by false
13 pretenses is a Class H felony."

14 Section 11. G.S. 53-129 reads as rewritten:

15 "**§ 53-129. Misapplication, embezzlement of funds, etc.**

16 Whoever being an officer, employee, agent or director of a bank, with intent to
17 defraud or injure the bank, or any person or corporation, or to deceive an officer of the
18 bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or
19 misapplies any of the money, funds, credit or property of such bank, whether owned by it
20 or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth a
21 certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a
22 note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or
23 solicits, obtains or receives money for a bank not in good faith, intended to become the
24 property of such bank; or whoever being an officer, employee, agent, or director of a
25 bank, makes or permits the making of a false statement or certificate, as to a deposit, trust
26 fund or contract, or makes or permits to be made a false entry in a book, report, statement
27 or record of such bank, or conceals or permits to be concealed by any means or manner,
28 the true and correct entries of said bank, or its true and correct transactions, who
29 knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent
30 company or corporation, or corporation which has ceased to exist, or which never had
31 any existence, or upon collateral consisting of stocks or bonds of such company or
32 corporation, or who makes or publishes or knowingly permits to be made or published a
33 false report, statement or certificate as to the true financial condition of such bank, shall
34 be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement of money, funds, credit,
35 or property with the value of one hundred thousand dollars (\$100,000) or more is a Class
36 C felony. Embezzlement of money, funds, credit, or property with the value of less than
37 one hundred thousand dollars (\$100,000) is a Class H felony."

38 Section 12. G.S. 58-2-162 reads as rewritten:

39 "**§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.**

40 If any insurance agent, broker, or administrator embezzles or fraudulently converts to
41 his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of,
42 or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any
43 money, negotiable instrument, or other consideration received by him in his performance

1 as an agent, broker, or administrator, he shall be ~~punished as a Class H felon, guilty of a~~
2 felony. Embezzlement by insurance agents, brokers, or administrators of money,
3 negotiable instrument, or other consideration with the value of one hundred thousand
4 dollars (\$100,000) or more is a Class C felony. Embezzlement by insurance agents,
5 brokers, or administrators of money, negotiable instrument, or other consideration with
6 the value of less than one hundred thousand dollars (\$100,000) is a Class H felony."

7 Section 13. G.S. 90-210.70(a) reads as rewritten:

8 "(a) Anyone who embezzles or who fraudulently, or knowingly and willfully
9 misapplies, or in any manner converts preneed funeral funds to his own use, or for the use
10 of any partnership, corporation, association, or entity for any purpose other than as
11 authorized by this Article; or anyone who takes, makes away with or secretes, with intent
12 to embezzle or fraudulently or knowingly and willfully misapply or in any manner
13 convert preneed funeral funds for his own use or the use of any other person for any
14 purpose other than as authorized by this Article shall be ~~punished as a Class H felon, guilty~~
15 of a felony. Embezzlement of preneed funeral funds with the value of one hundred
16 thousand dollars (\$100,000) or more is a Class C felony. Embezzlement of preneed
17 funeral funds with the value of less than one hundred thousand dollars (\$100,000) is a
18 Class H felony. Each such embezzlement, conversion, or misapplication shall constitute
19 a separate offense and may be prosecuted individually. Upon conviction, all licenses
20 issued under this Article shall be revoked."

21 Section 14. This act becomes effective December 1, 1997, and applies to
22 offenses committed on or after that date.