

HB0190/293621/1

BY: Conference Committee

AMENDMENTS TO HOUSE BILL 190
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Penalties” and substitute “Remedies”; in the same line, strike “– Repeal”; strike beginning with “repealing” in line 3 down through “theft” in line 4 and substitute “repealing a certain provision of law providing that a responsible person is civilly liable to a merchant for certain civil penalties for shoplifting and employee theft; altering requirements for certain demand letters relating to alleged acts of shoplifting or employee theft; providing that a responsible person who prevails in a certain civil action is entitled to an award of court costs and reasonable attorney’s fees, under certain circumstances; requiring a court to reduce the amount of restitution awarded in a certain criminal proceeding by an amount equal to certain damages; prohibiting a person from taking certain actions in recovering or attempting to recover certain damages; establishing a certain penalty for certain violations; requiring certain merchants to report certain information to the Department of Labor, Licensing, and Regulation on or before a certain date; providing for the termination of a certain provision of this Act; making stylistic and conforming changes”; in line 4, strike “penalties” and substitute “remedies”; and strike in their entirety lines 6 through 11, inclusive, and substitute:

“BY repealing and reenacting, without amendments,

Article – Courts and Judicial Proceedings

Section 3-1301, 3-1302, 3-1304, 3-1307, and 3-1308

Annotated Code of Maryland

(2013 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,

Article – Courts and Judicial Proceedings

Section 3-1303, 3-1305, and 3-1306

Annotated Code of Maryland

(Over)

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(2013 Replacement Volume and 2015 Supplement)

BY adding to

Article – Courts and Judicial Proceedings

Section 3-1306.1 and 3-1309

Annotated Code of Maryland

(2013 Replacement Volume and 2015 Supplement)”.

AMENDMENT NO. 2

On page 1 in lines 15 and 16, on page 2 in lines 27 and 28, on page 3 in lines 9 and 10, on page 4 in lines 23, 24, 28, and 29, and on page 5 in lines 3, 4, 9, 10, 16, 17, and 20, in each instance, strike the bracket.

On page 1, in line 15, strike “Civil Penalties” and substitute “REMEDIES”.

On page 3, in line 3, after the semicolon insert “AND”; strike beginning with the semicolon in line 6 down through “\$1,000” in line 9; strike in their entirety lines 11 through 17, inclusive; in line 18, strike “(b)” and substitute “(A)”; in the same line, strike “The” and substitute “IF A MERCHANT ELECTS TO SEEK THE DAMAGES AVAILABLE UNDER § 3-1302 OF THIS SUBTITLE, THE”; in the same line, after “letter” insert “, PREPARED BY A LAWYER ADMITTED TO PRACTICE LAW IN THE STATE,”; in line 24, after “committed” insert “, INCLUDING THE DATE AND TIME THE ACT IS ALLEGED TO HAVE OCCURRED;”

(II) SPECIFY THE BASIS ON WHICH THE RESPONSIBLE PERSON OR, IF APPLICABLE, THE CHILD OF THE RESPONSIBLE PERSON HAS BEEN ACCUSED OF THE ACT OF SHOPLIFTING OR EMPLOYEE THEFT”;

in line 25, strike “(ii)” and substitute “(III)”; strike in their entirety lines 27 and 28; and in line 29, strike “and civil penalty”.

On page 3 in line 21, and on page 4 in line 10, in each instance, after “address” insert “BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED”.

On page 4, in line 2, strike “and civil penalty”; in line 4, strike “and”; in line 7, after “letter” insert “; AND”

(VII) SPECIFY THAT, IF THE RESPONSIBLE PERSON DISPUTES LIABILITY FOR THE ALLEGED ACT OF SHOPLIFTING OR EMPLOYEE THEFT:

1. THE RESPONSIBLE PERSON MAY REFUSE TO PAY THE DAMAGES; AND

2. IF THE RESPONSIBLE PERSON PREVAILS IN A CIVIL SUIT FOR DAMAGES ARISING FROM THE ALLEGED ACT OF SHOPLIFTING OR EMPLOYEE THEFT, THE RESPONSIBLE PERSON IS ENTITLED TO AN AWARD OF COURT COSTS AND REASONABLE ATTORNEY’S FEES.

(3) IF APPLICABLE, THE MERCHANT SHALL CAUSE A COPY OF ANY POLICE REPORT CONCERNING THE ALLEGED ACT OF SHOPLIFTING OR EMPLOYEE THEFT TO BE ATTACHED TO THE INITIAL DEMAND LETTER;

in lines 8, 13, and 21, strike “(c)”, “(b)(2)(i) through (v)”, and “(d)”, respectively, and substitute “(B)”, “(A)(2)(I) THROUGH (VII)”, and “(C)”, respectively; in line 9, after the second “letter” insert “, PREPARED BY A LAWYER ADMITTED TO PRACTICE LAW IN THE STATE,”; in line 19, strike “penalties,”; and in lines 32 and 33, strike “and the civil penalty”.

On page 5, in line 1, after “(b)” insert “IN A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE, THE MERCHANT SHALL SUBMIT PROOF TO THE COURT THAT THE”

MERCHANT COMPLIED WITH ALL REQUIREMENTS UNDER § 3-1303 OF THIS
SUBTITLE CONCERNING DEMAND LETTERS.

(C)”;

after line 3, insert:

“(D) IF THE RESPONSIBLE PERSON PREVAILS IN A CIVIL ACTION
BROUGHT UNDER THIS SUBTITLE, THE RESPONSIBLE PERSON SHALL BE
ENTITLED TO AN AWARD OF COURT COSTS AND REASONABLE ATTORNEY’S FEES,
TO BE ASSESSED WITHOUT REGARD TO THE ABILITY OF THE MERCHANT TO PAY.”;

in lines 7 and 8, in each instance, strike “and penalties”; in line 8, strike “However, the”
and substitute:

“(C) THE”;

after line 9, insert:

“(D) A COURT SHALL REDUCE THE AMOUNT OF ANY RESTITUTION
AWARDED IN A CRIMINAL PROCEEDING REGARDING AN ACT FOR WHICH A
RESPONSIBLE PERSON HAS PAID DAMAGES UNDER THIS SUBTITLE BY AN
AMOUNT EQUAL TO THOSE DAMAGES.

3-1306.1.

(A) IN RECOVERING OR ATTEMPTING TO RECOVER DAMAGES ARISING
FROM AN ALLEGED ACT OF SHOPLIFTING OR EMPLOYEE THEFT UNDER THIS
SUBTITLE, A PERSON MAY NOT:

(1) USE OR THREATEN FORCE OR VIOLENCE;

(2) COMMUNICATE WITH A RESPONSIBLE PERSON, IN A MANNER THAT REASONABLY CAN BE EXPECTED TO ABUSE OR HARASS THE RESPONSIBLE PERSON, INCLUDING COMMUNICATING WITH EXCESSIVE FREQUENCY OR AT UNUSUAL HOURS;

(3) USE OBSCENE OR GROSSLY ABUSIVE LANGUAGE IN COMMUNICATING WITH THE RESPONSIBLE PERSON;

(4) CLAIM, ATTEMPT, OR THREATEN TO ENFORCE A RIGHT WITH KNOWLEDGE THAT THE RIGHT DOES NOT EXIST; OR

(5) USE A COMMUNICATION THAT SIMULATES LEGAL OR JUDICIAL PROCESS OR GIVES THE APPEARANCE OF BEING AUTHORIZED, ISSUED, OR APPROVED BY A GOVERNMENT, GOVERNMENTAL AGENCY, OR LAWYER WHEN IT IS NOT.

(B) A PERSON WHO VIOLATES THIS SECTION IS LIABLE FOR:

(1) ANY ACTUAL DAMAGES PROXIMATELY CAUSED BY THE VIOLATION; AND

(2) REASONABLE COURT COSTS AND ATTORNEY'S FEES.”;

strike beginning with the colon in line 11 down through “Do” in line 14 and substitute “DO”; and in line 19, strike “and civil penalty”; after line 20, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

(Over)

Article – Courts and Judicial Proceedings

3-1309.

ON OR BEFORE JANUARY 15 OF EACH YEAR, A MERCHANT THAT SOUGHT DAMAGES UNDER THIS SUBTITLE DURING THE PRECEDING CALENDAR YEAR SHALL SUBMIT A LETTER TO THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION THAT INCLUDES THE FOLLOWING INFORMATION FOR THE PRECEDING CALENDAR YEAR:

(1) THE NUMBER OF ALLEGED SHOPLIFTING OR EMPLOYEE THEFT INCIDENTS;

(2) THE NUMBER OF DEMAND LETTERS SENT BY THE MERCHANT;

(3) THE AMOUNT OF MONEY RECEIVED IN RESPONSE TO THOSE DEMAND LETTERS;

(4) THE NUMBER OF CRIMINAL PROSECUTIONS SOUGHT BY THE MERCHANT AND THE FINAL DISPOSITIONS OF THOSE PROSECUTIONS; AND

(5) THE NUMBER OF CIVIL SUITS FILED UNDER THIS SUBTITLE BY THE MERCHANT AND THE FINAL DISPOSITION OF THOSE SUITS.”;

in line 21, strike “2.” and substitute “3.”; and in line 22, after “2016.” insert “Section 2 of this Act shall remain effective for a period of 3 years and, at the end of September 30, 2019, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.”.