

# HOUSE BILL 190

D3

(6lr1001)

## ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **Delegates Lierman, Vallario, Dumais, Anderson, Atterbeary, Barron, Carter, Morales, Rosenberg, Sanchez, Smith, and Valentino-Smith**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Civil ~~Penalties~~ Remedies for Shoplifting and Employee Theft —~~Repeal~~**

3 FOR the purpose of ~~repealing certain provisions establishing liability to a merchant for civil~~  
4 ~~penalties for shoplifting and employee theft~~ repealing a certain provision of law  
5 providing that a responsible person is civilly liable to a merchant for certain civil  
6 penalties for shoplifting and employee theft; altering requirements for certain demand  
7 letters relating to alleged acts of shoplifting or employee theft; providing that a  
8 responsible person who prevails in a certain civil action is entitled to an award of  
9 court costs and reasonable attorney's fees, under certain circumstances; requiring a  
10 court to reduce the amount of restitution awarded in a certain criminal proceeding by  
11 an amount equal to certain damages; prohibiting a person from taking certain actions  
12 in recovering or attempting to recover certain damages; establishing a certain penalty  
13 for certain violations; requiring certain merchants to report certain information to the  
14 Department of Labor, Licensing, and Regulation on or before a certain date; providing

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber/conference committee amendments.



1 *for the termination of a certain provision of this Act; making stylistic and conforming*  
 2 *changes; and generally relating to civil ~~penalties~~ remedies for shoplifting and*  
 3 *employee theft.*

4 ~~BY repealing~~

5 ~~Article – Courts and Judicial Proceedings~~

6 ~~Section 3-1301 through 3-1308 and the subtitle “Subtitle 13. Civil Penalties for~~  
 7 ~~Shoplifting and Employee Theft”~~

8 ~~Annotated Code of Maryland~~

9 ~~(2013 Replacement Volume and 2015 Supplement)~~

10 *BY repealing and reenacting, without amendments,*

11 *Article – Courts and Judicial Proceedings*

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

13 *Annotated Code of Maryland*

14 *(2013 Replacement Volume and 2015 Supplement)*

15 *BY repealing and reenacting, with amendments,*

16 *Article – Courts and Judicial Proceedings*

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

18 *Annotated Code of Maryland*

19 *(2013 Replacement Volume and 2015 Supplement)*

20 *BY adding to*

21 *Article – Courts and Judicial Proceedings*

22 *Section 3-1306.1 and 3-1309*

23 *Annotated Code of Maryland*

24 *(2013 Replacement Volume and 2015 Supplement)*

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
 26 That the Laws of Maryland read as follows:

27 **Article – Courts and Judicial Proceedings**

28 ~~¶~~Subtitle 13. ~~Civil Penalties~~ **REMEDIES** for Shoplifting and Employee Theft.~~¶~~

29 ~~¶~~3-1301.

30 (a) In this subtitle the following terms have the meanings indicated.

31 (b) “Employee theft” means the theft of any merchandise from a mercantile  
 32 establishment by an employee, agent, or contractor of the mercantile establishment.

33 (c) “Mercantile establishment” means any place where merchandise is displayed,  
 34 held, or offered for sale, either at retail or wholesale.

1 (d) "Merchandise" means any goods, wares, commodity, money, or other personal  
2 property located on the premises of a mercantile establishment.

3 (e) "Merchant" means the owner or operator of a mercantile establishment.

4 (f) "Responsible person" means:

5 (1) Any individual, whether an adult or a minor, who commits or attempts  
6 to commit an act of shoplifting or employee theft; and

7 (2) The parents or legal guardians of an unemancipated minor who  
8 commits or attempts to commit an act of shoplifting or employee theft.

9 (g) "Shoplift" means any 1 or more of the following acts committed by a person  
10 without the consent of the merchant and with the purpose or intent of appropriating  
11 merchandise to that person's own use without payment, obtaining merchandise at less than  
12 its stated sales price, or otherwise depriving a merchant of all or any part of the value or  
13 use of merchandise:

14 (1) Removing any merchandise from its immediate place of display or from  
15 any other place on the premises of the mercantile establishment;

16 (2) Obtaining or attempting to obtain possession of any merchandise by  
17 charging that merchandise to another person without the authority of that person or by  
18 charging that merchandise to a fictitious person;

19 (3) Concealing any merchandise;

20 (4) Substituting, altering, removing, or disfiguring any label or price tag;

21 (5) Transferring any merchandise from a container in which that  
22 merchandise is displayed or packaged to any other container; or

23 (6) Disarming any alarm tag attached to any merchandise.‡

24 ‡3-1302.

25 A responsible person is civilly liable to the merchant:

26 (1) To restore the merchandise to the merchant or, if the merchandise is  
27 not recoverable, has been damaged, or otherwise has lost all or part of its value, to pay the  
28 merchant an amount equal to the merchant's stated sales price for the merchandise; **AND**

29 (2) To pay the merchant for any other actual damages sustained by the  
30 merchant, not including the loss of time or wages incurred in connection with the  
31 apprehension or prosecution of the shoplifter or employee, ~~and~~

~~(3) Subject to the merchant's compliance with the procedures contained in § 3-1303 of this subtitle, to pay the merchant a civil penalty equal to twice the merchant's stated sales price for the merchandise, but not less than \$50 nor more than \$1,000.~~

~~§3-1303.~~

~~(a) If a merchant elects to seek the civil penalty available under § 3-1302(3) of this subtitle, the merchant:~~

~~(1) Shall comply with the procedures contained in this section;~~

~~(2) May not orally request or accept any payment at the time of apprehension; and~~

~~(3) May not accept any payment in cash without issuing a receipt for the payment.~~

~~(b) (A)~~ (1) ~~The~~ **IF A MERCHANT ELECTS TO SEEK THE DAMAGES AVAILABLE UNDER § 3-1302 OF THIS SUBTITLE, THE** merchant shall cause an initial demand letter, **PREPARED BY A LAWYER ADMITTED TO PRACTICE LAW IN THE STATE,** to be:

(i) Hand delivered personally to the responsible person; or

(ii) Mailed to the responsible person at that person's last known address **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.**

(2) The initial demand letter shall:

(i) Identify the act of shoplifting or employee theft alleged to have been committed, **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;**

~~(ii) (III)~~ Specify the amount of damages sought under § 3-1302(1) and (2) of this subtitle;

~~(iii) Specify the amount of the civil penalty sought under § 3-1302(3) of this subtitle and explain the method of calculating that amount;~~

(iv) Request payment of the damages ~~and civil penalty~~ by cash, money order, certified check, or cashier's check;

1 (v) Contain a conspicuous notice advising the responsible person  
 2 that payment of the damages ~~and civil penalty~~ does not preclude the possibility of criminal  
 3 prosecution, but that the payment would not be admissible in any criminal proceeding as  
 4 an admission or evidence of guilt; ~~and~~

5 (vi) Specify the date by which the responsible person shall make the  
 6 required payment to avoid civil action, which date shall be at least 15 days after the date  
 7 of hand delivery or from the postmark date, as the case may be, of the initial demand letter;  
 8 AND

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

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

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

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

20 ~~(B)~~ (1) If payment in full is not received by the merchant on or before  
 21 the date specified in the initial demand letter, the merchant shall cause a second demand  
 22 letter, PREPARED BY A LAWYER ADMITTED TO PRACTICE LAW IN THE STATE, to be  
 23 mailed to the responsible person at that person's last known address BY CERTIFIED MAIL,  
 24 RETURN RECEIPT REQUESTED.

25 (2) The second demand letter shall:

26 (i) Contain the same information, request for payment, and notice  
 27 that is required by subsection ~~(b)(2)(i) through (v)~~ (A)(2)(I) THROUGH (VII) of this section  
 28 for an initial demand letter;

29 (ii) Specify the date by which the responsible person shall make the  
 30 required payment to avoid civil action, which date shall be at least 10 days from the  
 31 postmark date of the second demand letter; and

32 (iii) Advise the responsible person that, if the required payment is  
 33 not made in full on or before the date specified in the second demand letter, the responsible

1 person will be subject to immediate institution of a civil suit for damages, ~~penalties,~~ court  
2 costs, and reasonable attorney's fees.

3 ~~(d)~~ **(C)** The merchant shall get a certificate of mailing from the U.S. Postal  
4 Service for each initial demand letter and second demand letter mailed to a responsible  
5 person under this section.†

6 ~~†3-1304.~~

7 A responsible person who complies fully with an initial demand letter or a second  
8 demand letter on or before the date specified in that demand letter may not incur any  
9 further civil liability to the merchant for damages arising out of the act of shoplifting or  
10 employee theft that was the subject of the demand letter.†

11 ~~†3-1305.~~

12 (a) If the second demand letter is returned unclaimed to the merchant or if full  
13 payment is not otherwise received by the merchant on or before the date specified in the  
14 second demand letter, the merchant may file a civil action to recover the damages ~~and the~~  
15 ~~civil penalty~~ provided for in § 3-1302 of this subtitle, together with court costs and  
16 reasonable attorney's fees.

17 (b) **IN A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE, THE MERCHANT**  
18 **SHALL SUBMIT PROOF TO THE COURT THAT THE MERCHANT COMPLIED WITH ALL**  
19 **REQUIREMENTS UNDER § 3-1303 OF THIS SUBTITLE CONCERNING DEMAND**  
20 **LETTERS.**

21 **(C)** If the merchant prevails in a civil action brought under this subtitle, the  
22 merchant shall also be entitled to an award of court costs and reasonable attorney's fees, to  
23 be assessed without regard to the ability of the responsible person to pay.†

24 **(D) IF THE RESPONSIBLE PERSON PREVAILS IN A CIVIL ACTION BROUGHT**  
25 **UNDER THIS SUBTITLE, THE RESPONSIBLE PERSON SHALL BE ENTITLED TO AN**  
26 **AWARD OF COURT COSTS AND REASONABLE ATTORNEY'S FEES, TO BE ASSESSED**  
27 **WITHOUT REGARD TO THE ABILITY OF THE MERCHANT TO PAY.**

28 ~~†3-1306.~~

29 (a) Criminal prosecution for an offense of theft under § 7-104 of the Criminal Law  
30 Article is not a prerequisite to the maintenance of a civil action under this subtitle.

31 (b) The recovery of damages ~~and penalties~~ under this subtitle does not preclude  
32 criminal prosecution. ~~However, the~~

1 ~~(C) THE~~ payment of damages ~~and penalties~~ under this subtitle is not admissible  
2 in any criminal proceeding as an admission of guilt or as evidence of guilt.‡

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

7 3-1306.1.

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

11 (1) USE OR THREATEN FORCE OR VIOLENCE;

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

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

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

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

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

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

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

27 ~~‡3-1307.~~

28 The procedures required by § 3-1303 of this subtitle:

29 ~~(1) Apply only to the extent that a merchant elects to seek recovery of the~~  
30 ~~civil penalty available under § 3-1302(3) of this subtitle; and~~

1           ~~(2)~~ ~~Do~~ DO not otherwise limit a merchant or other person from electing to  
 2 pursue any other civil remedy or cause of action for damages against any responsible person  
 3 under this subtitle or otherwise as permitted by law.†

4 ~~†3-1308.~~

5           The District Court has exclusive original civil jurisdiction in an action under this  
 6 subtitle if the damages ~~and civil penalty~~ claimed do not exceed \$10,000, exclusive of  
 7 attorney's fees.†

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

10                                   Article – Courts and Judicial Proceedings

11 3-1309.

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

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

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

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

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

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

26           SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 27 October 1, 2016. Section 2 of this Act shall remain effective for a period of 3 years and, at  
 28 the end of September 30, 2019, with no further action required by the General Assembly.  
 29 Section 2 of this Act shall be abrogated and of no further force and effect.