

SENATE BILL 508

D3

(6lr1322)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senators Ramirez, Norman, and Ferguson**

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.

President.

CHAPTER _____

1 AN ACT concerning

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

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

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

3 ~~BY repealing~~

4 ~~Article – Courts and Judicial Proceedings~~

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

7 ~~Annotated Code of Maryland~~

8 ~~(2013 Replacement Volume and 2015 Supplement)~~

9 BY repealing and reenacting, without amendments,

10 Article – Courts and Judicial Proceedings

11 Section 3–1301, 3–1302, 3–1304, 3–1307, and 3–1308

12 Annotated Code of Maryland

13 (2013 Replacement Volume and 2015 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Courts and Judicial Proceedings

16 Section 3–1303, 3–1305, and 3–1306

17 Annotated Code of Maryland

18 (2013 Replacement Volume and 2015 Supplement)

19 BY adding to

20 Article – Courts and Judicial Proceedings

21 Section 3–1306.1 and 3–1309

22 Annotated Code of Maryland

23 (2013 Replacement Volume and 2015 Supplement)

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

26 **Article – Courts and Judicial Proceedings**

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

28 ~~¶~~3–1301.

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

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

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

34 (d) “Merchandise” means any goods, wares, commodity, money, or other personal
 35 property located on the premises of a mercantile establishment.

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

2 (f) "Responsible person" means:

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

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

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

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

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

17 (3) Concealing any merchandise;

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

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

21 (6) Disarming any alarm tag attached to any merchandise.†

22 †3-1302.

23 A responsible person is civilly liable to the merchant:

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

27 (2) To pay the merchant for any other actual damages sustained by the
28 merchant, not including the loss of time or wages incurred in connection with the
29 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) (III) 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;~~

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

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

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

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

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

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

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

13 2. IF THE RESPONSIBLE PERSON PREVAILS IN A CIVIL
 14 SUIT FOR DAMAGES AND PENALTIES ARISING FROM THE ALLEGED ACT OF
 15 SHOPLIFTING OR EMPLOYEE THEFT, THE RESPONSIBLE PERSON IS ENTITLED TO AN
 16 AWARD OF COURT 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)~~ (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)~~ ~~(VIII)~~ (A)(2)(I) THROUGH (VII) of this
 28 section 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
 34 person will be subject to immediate institution of a civil suit for damages, ~~penalties,~~ court
 35 costs, and reasonable attorney's fees.

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

4 ~~§~~3-1304.

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

9 ~~§~~3-1305.

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

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

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

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

26 ~~§~~3-1306.

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

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

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

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

5 3-1306.1.

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

9 (1) USE OR THREATEN FORCE OR VIOLENCE;

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

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

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

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

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

23 (1) ANY ACTUAL DAMAGES PROXIMATELY CAUSED BY THE
 24 VIOLATION, INCLUDING DAMAGES FOR EMOTIONAL DISTRESS OR MENTAL ANGUISH
 25 SUFFERED WITH OR WITHOUT ACCOMPANYING PHYSICAL INJURY; 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 as
 9 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.