

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 508

(Senator Ramirez, *et al.*)

Judicial Proceedings

Judiciary

Civil Remedies for Shoplifting and Employee Theft

This bill makes several changes to statutory provisions authorizing a merchant to pursue damages and civil penalties for alleged acts of shoplifting and/or employee theft. The bill (1) repeals a provision of law establishing that a “responsible person” is civilly liable to a merchant for certain civil penalties for shoplifting and employee theft; (2) alters the requirements for demand letters pertaining to alleged acts of shoplifting and employee theft; (3) requires demand letters to be prepared by a lawyer admitted to practice law in the State; (4) requires that a demand letter that is mailed must be sent by certified mail, return receipt requested; (5) requires a merchant who pursues a civil action after the second demand letter to submit proof that the merchant complied with all requirements concerning demand letters; (6) establishes that a “responsible person” is entitled to an award of court costs and reasonable attorney’s fees, regardless of the merchant’s ability to pay, if the responsible person prevails in a civil suit for damages arising from the alleged act of shoplifting or employee theft; (7) requires a court to reduce the amount of any restitution awarded in a criminal proceeding regarding an act for which a responsible person has paid damages by the amount of damages paid; (8) prohibits a person from engaging in certain threatening or harassing behavior while attempting to recover damages arising from an alleged act of shoplifting or employee theft; and (9) requires merchants that seek these types of damages to report specified information to the Department of Labor, Licensing, and Regulation (DLLR).

Fiscal Summary

State Effect: The bill is procedural in nature and does not materially affect State finances.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill repeals a provision of law establishing that a “responsible person” is civilly liable to pay a merchant that complies with specified statutory procedures a civil penalty equal to twice the stated sales price of the shoplifted/stolen merchandise, but at least \$50 and up to a maximum of \$1,000. The bill adds the following information to the content a merchant that elects to seek specified statutory damages for shoplifting/employee theft must include in its initial demand letter: (1) the date and time the act of shoplifting or employee theft is alleged to have occurred; and (2) 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.

An initial demand letter must also 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) the responsible person is entitled to an award of court costs and reasonable attorney’s fees if the responsible person prevails in a civil suit for damages arising from the alleged act of shoplifting or employee theft.

If applicable, the merchant must attach a copy of any police report concerning the alleged act of shoplifting or employee theft to the initial demand letter.

In recovering or attempting to recover damages arising from an alleged act of shoplifting or employee theft, 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. A person who violates these prohibitions is liable for any actual damages proximately caused by the violation and reasonable court costs and attorney’s fees.

By January 15 of each year, a merchant that sought these types of damages during the preceding calendar year must submit a letter to DLLR 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 the statutory provisions affected by the bill and the final disposition of those lawsuits. The reporting requirement terminates September 30, 2019.

Current Law: Under statutory provisions pertaining to civil penalties for shoplifting and employee theft, a “responsible person” is (1) any individual, whether an adult or a minor, who commits or attempts to commit an act of shoplifting or employee theft and (2) the parents or legal guardians of an unemancipated minor who commits or attempts to commit an act of shoplifting or employee theft.

A responsible person is civilly liable to a merchant (1) to restore the merchandise to the merchant or, if it is not recoverable, has been damaged, or otherwise has lost all or part of its value, to pay the merchant an amount equal to the stated sales price; (2) to pay the merchant for any other actual damages, not including the loss of time or wages connected to the apprehension or prosecution of the shoplifter or employee; and (3) subject to the merchant’s compliance with certain procedures, to pay the merchant a civil penalty equal to twice the stated sales price, but at least \$50 and up to a maximum of \$1,000.

If a merchant elects to seek this civil penalty, the merchant (1) must comply with specified procedures; (2) may not orally request or accept any payment at the time of apprehension of the responsible person; and (3) may not accept any payment in cash without issuing a receipt for the payment.

While a merchant is prohibited from orally requesting or accepting payment at the time of the alleged shoplifter/employee’s apprehension, the merchant is required to send a demand letter to the responsible person. The merchant’s initial demand letter must be hand delivered personally to the responsible person or mailed to the responsible person at the person’s last known address.

The initial demand letter must:

- identify the act of shoplifting or employee theft alleged to have been committed;
- specify the amount of damages and civil penalty sought and explain how the civil penalty amount was calculated;
- request payment of the damages and civil penalty by cash, money order, certified check, or cashier’s check;
- contain a conspicuous notice advising the responsible person that payment of the damages and civil penalty does not preclude the possibility of criminal prosecution but that the payment would not be admissible in any criminal proceeding as an admission or evidence of guilt; and
- specify the date by which the responsible person must make the required payment to avoid civil action, which must be at least 15 days after the date the initial demand letter was hand delivered or postmarked.

If the merchant does not receive payment in full by the due date specified in the initial demand letter, the merchant must send a second demand letter to the responsible person. The second demand letter must (1) comply with specified procedures and contain information similar to what is required for the initial demand letter and (2) advise the responsible person that if the merchant does not receive payment in full by the due date specified in the second demand letter, the responsible person will be subject to immediate institution of a civil suit for damages, penalties, court costs, and reasonable attorney's fees.

A responsible person who complies fully with an initial or second demand letter by the due date specified in the letter may not incur any further civil liability to the merchant for damages arising out of the act of shoplifting or employee theft that was the subject of the demand letter. If the second demand letter is returned unclaimed to the merchant or if full payment is not otherwise received by the merchant by the due date specified in the second demand letter, the merchant may file a civil action to recover the damages and the civil penalty, together with court costs and reasonable attorney's fees.

A merchant who prevails in a civil action is entitled to an award of court costs and reasonable attorney's fees without regard to the ability of the responsible person to pay those fees and costs.

Criminal prosecution for theft is not a prerequisite to the maintenance of a civil action for damages and civil penalties, and the recovery of damages and penalties by the merchant does not preclude criminal prosecution. However, the payment of damages and penalties by the responsible person to the merchant is not admissible in any criminal proceeding as an admission of guilt or as evidence of guilt.

The procedures described above only apply to the extent that a merchant seeks recovery of the civil penalty authorized under statute for shoplifting or employee theft and do not otherwise limit a merchant or other person from electing to pursue any other civil remedy or cause of action for damages against any responsible person.

The District Court has exclusive original civil jurisdiction in an action for damages and civil penalties for shoplifting and employee theft if the damages and civil penalty claimed do not exceed \$10,000, exclusive of attorney's fees.

Background: As previously stated, the statutory authority of a merchant to collect damages and/or civil penalties for alleged shoplifting and employee theft is independent of the criminal justice process. According to news reports, some retailers, particularly larger retailers, are exercising this authority by escorting alleged shoplifters (including employees) to back rooms and handing demand letters to alleged shoplifters prior to the arrival of law enforcement or even if the merchandise is returned to the merchant. In some instances, alleged shoplifters may have been wrongfully accused and are never charged

with a crime but still receive demand letters from law firms and collection firms employed by retailers to collect these damages and penalties.

Small Business Effect: Small businesses that allege shoplifting may incur increased costs to the extent that they are unable to collect civil penalties authorized under existing statute, have to pay attorney's fees and court costs, and receive reduced restitution, or are liable for actual damages under the bill. This analysis assumes that small businesses do not seek damages for shoplifting and/or employee theft under the statutory provisions affected by the bill at a rate that would result in additional expenditures to comply with the bill's reporting requirements. Small business law firms may benefit to the extent they are contracted to provide demand letters as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 190 (Delegate Lierman, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), *The Wall Street Journal*, *The Baltimore Sun*, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510