

# HOUSE BILL 1239

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By: **Delegates Lierman, Vallario, Dumais, Anderson, Atterbeary, Barron, Morales, Rosenberg, Smith, Sydnor, and Valentino-Smith**

Introduced and read first time: March 4, 2015

Assigned to: Rules and Executive Nominations

Re-referred to: Judiciary, March 9, 2015

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Committee Report: Favorable

House action: Adopted

Read second time: March 18, 2015

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

1 AN ACT concerning

2 **Civil Penalties 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; and generally relating to civil penalties  
5 for shoplifting and employee theft.

6 BY repealing

7 Article – Courts and Judicial Proceedings

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

10 Annotated Code of Maryland

11 (2013 Replacement Volume and 2014 Supplement)

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

14 **Article – Courts and Judicial Proceedings**

15 [Subtitle 13. Civil Penalties for Shoplifting and Employee Theft.]

16 [3–1301.

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

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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.



1 (b) "Employee theft" means the theft of any merchandise from a mercantile  
2 establishment by an employee, agent, or contractor of the mercantile establishment.

3 (c) "Mercantile establishment" means any place where merchandise is displayed,  
4 held, or offered for sale, either at retail or wholesale.

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

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

8 (f) "Responsible person" means:

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

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

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

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

20 (2) Obtaining or attempting to obtain possession of any merchandise by  
21 charging that merchandise to another person without the authority of that person or by  
22 charging that merchandise to a fictitious person;

23 (3) Concealing any merchandise;

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

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

27 (6) Disarming any alarm tag attached to any merchandise.]

28 [3-1302.

29 A responsible person is civilly liable to the merchant:

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

4 (2) To pay the merchant for any other actual damages sustained by the  
5 merchant, not including the loss of time or wages incurred in connection with the  
6 apprehension or prosecution of the shoplifter or employee; and

7 (3) Subject to the merchant's compliance with the procedures contained in  
8 § 3-1303 of this subtitle, to pay the merchant a civil penalty equal to twice the merchant's  
9 stated sales price for the merchandise, but not less than \$50 nor more than \$1,000.]

10 [3-1303.

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

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

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

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

18 (b) (1) The merchant shall cause an initial demand letter to be:

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

20 (ii) Mailed to the responsible person at that person's last known  
21 address.

22 (2) The initial demand letter shall:

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

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

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

29 (iv) Request payment of the damages and civil penalty by cash,  
30 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 (c) (1) If payment in full is not received by the merchant on or before the date  
9 specified in the initial demand letter, the merchant shall cause a second demand letter to  
10 be mailed to the responsible person at that person's last known address.

11 (2) The second demand letter shall:

12 (i) Contain the same information, request for payment, and notice  
13 that is required by subsection (b)(2)(i) through (v) of this section for an initial demand letter;

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

17 (iii) Advise the responsible person that, if the required payment is  
18 not made in full on or before the date specified in the second demand letter, the responsible  
19 person will be subject to immediate institution of a civil suit for damages, penalties, court  
20 costs, and reasonable attorney's fees.

21 (d) The merchant shall get a certificate of mailing from the U.S. Postal Service  
22 for each initial demand letter and second demand letter mailed to a responsible person  
23 under this section.]

24 [3-1304.

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

29 [3-1305.

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

1 (b) If the merchant prevails in a civil action brought under this subtitle, the  
2 merchant shall also be entitled to an award of court costs and reasonable attorney’s fees, to  
3 be assessed without regard to the ability of the responsible person to pay.]

4 [3–1306.

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

7 (b) The recovery of damages and penalties under this subtitle does not preclude  
8 criminal prosecution. However, the payment of damages and penalties under this subtitle  
9 is not admissible in any criminal proceeding as an admission of guilt or as evidence of guilt.]

10 [3–1307.

11 The procedures required by § 3–1303 of this subtitle:

12 (1) Apply only to the extent that a merchant elects to seek recovery of the  
13 civil penalty available under § 3–1302(3) of this subtitle; and

14 (2) Do not otherwise limit a merchant or other person from electing to  
15 pursue any other civil remedy or cause of action for damages against any responsible person  
16 under this subtitle or otherwise as permitted by law.]

17 [3–1308.

18 The District Court has exclusive original civil jurisdiction in an action under this  
19 subtitle if the damages and civil penalty claimed do not exceed \$10,000, exclusive of  
20 attorney’s fees.]

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2015.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.