

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

A BILL ENTITLED

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.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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;

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

1 (3) Subject to the merchant's compliance with the procedures contained in
2 § 3-1303 of this subtitle, to pay the merchant a civil penalty equal to twice the merchant's
3 stated sales price for the merchandise, but not less than \$50 nor more than \$1,000.]

4 [3-1303.

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

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

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

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

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

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

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

16 (2) The initial demand letter shall:

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

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

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

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

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

29 (vi) Specify the date by which the responsible person shall make the
30 required payment to avoid civil action, which date shall be at least 15 days after the date
31 of hand delivery or from the postmark date, as the case may be, of the initial demand letter.

1 (c) (1) If payment in full is not received by the merchant on or before the date
2 specified in the initial demand letter, the merchant shall cause a second demand letter to
3 be mailed to the responsible person at that person's last known address.

4 (2) The second demand letter shall:

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

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

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

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

17 [3-1304.

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

22 [3-1305.

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

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

31 [3-1306.

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

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

4 [3-1307.

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

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

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

11 [3-1308.

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

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