

Chapter 679

(Senate Bill 508)

AN ACT concerning

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

FOR the purpose of *repealing a certain provision of law providing that a responsible person is civilly liable to a merchant for certain civil penalties for shoplifting and employee theft; repealing certain provisions establishing liability to a merchant for civil penalties for shoplifting and employee theft altering requirements for certain demand letters relating to alleged acts of shoplifting or employee theft; providing that a responsible person who prevails in a certain civil action is entitled to an award of court costs and reasonable attorney's fees, under certain circumstances; requiring a court to reduce the amount of restitution awarded in a certain criminal proceeding by an amount equal to certain damages and civil penalties; prohibiting a person from taking certain actions in recovering or attempting to recover a certain civil penalty certain damages; establishing a certain penalty for certain violations; requiring certain merchants to report certain information to the Department of Labor, Licensing, and Regulation on or before a certain date; providing for the termination of a certain provision of this Act; making stylistic and conforming changes; and generally relating to civil ~~penalties~~ remedies for shoplifting and employee theft.*

BY repealing~~Article – Courts and Judicial Proceedings~~~~Section 3–1301 through 3–1308 and the subtitle “Subtitle 13. Civil Penalties for Shoplifting and Employee Theft”~~~~Annotated Code of Maryland~~~~(2013 Replacement Volume and 2015 Supplement)~~BY repealing and reenacting, without amendments,Article – Courts and Judicial ProceedingsSection 3–1301, 3–1302, 3–1304, 3–1307, and 3–1308Annotated Code of Maryland(2013 Replacement Volume and 2015 Supplement)BY repealing and reenacting, with amendments,Article – Courts and Judicial ProceedingsSection 3–1303, 3–1305, and 3–1306Annotated Code of Maryland(2013 Replacement Volume and 2015 Supplement)BY adding toArticle – Courts and Judicial ProceedingsSection 3–1306.1 and 3–1309Annotated Code of Maryland

(2013 Replacement Volume and 2015 Supplement)

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

Article – Courts and Judicial Proceedings

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

~~¶~~3-1301.

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

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

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

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

(e) “Merchant” means the owner or operator of a mercantile establishment.

(f) “Responsible person” means:

(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.

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

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

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

(3) Concealing any merchandise;

- (4) Substituting, altering, removing, or disfiguring any label or price tag;
- (5) Transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; or
- (6) Disarming any alarm tag attached to any merchandise.‡

‡3-1302.

A responsible person is civilly liable to the merchant:

- (1) To restore the merchandise to the merchant or, if the merchandise 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 merchant's stated sales price for the merchandise; **AND**
- (2) To pay the merchant for any other actual damages sustained by the merchant, not including the loss of time or wages incurred in connection with the 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) (IV)~~ ~~Specify the amount of the civil penalty sought under § 3-1302(3) of this subtitle and explain the method of calculating that amount;~~

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

~~(v) (VI) (V)~~ 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~~

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

~~(viii) (VII)~~ 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 CIVIL PENALTY~~; AND

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

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

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

(2) The second demand letter shall:

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

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

(iii) Advise the responsible person that, if the required payment is not made in full on or before the 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.

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

‡3-1304.

A responsible person who complies fully with an initial demand letter or a second demand letter on or before the date specified in that demand 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.‡

‡3-1305.

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

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

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

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

‡3-1306.

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

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

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

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

3-1306.1.

(A) IN RECOVERING OR ATTEMPTING TO RECOVER DAMAGES OR A CIVIL PENALTY ARISING FROM AN ALLEGED ACT OF SHOPLIFTING OR EMPLOYEE THEFT UNDER THIS SUBTITLE, 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.

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

(1) ANY ACTUAL DAMAGES PROXIMATELY CAUSED BY THE VIOLATION, INCLUDING DAMAGES FOR EMOTIONAL DISTRESS OR MENTAL ANGUISH SUFFERED WITH OR WITHOUT ACCOMPANYING PHYSICAL INJURY; AND

(2) REASONABLE COURT COSTS AND ATTORNEY’S FEES.

~~§~~3-1307.

The procedures required by § 3-1303 of this subtitle~~;~~

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

~~(2)~~ **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 under this subtitle or otherwise as permitted by law.~~†~~

~~§~~3-1308.

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

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

Article – Courts and Judicial Proceedings

3-1309.

ON OR BEFORE JANUARY 15 OF EACH YEAR, A MERCHANT THAT SOUGHT DAMAGES UNDER THIS SUBTITLE DURING THE PRECEDING CALENDAR YEAR SHALL SUBMIT A LETTER TO THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION 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 THIS SUBTITLE BY THE MERCHANT AND THE FINAL DISPOSITION OF THOSE SUITS.**

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 28, 2016.