

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 399

(Senator Feldman)

Judicial Proceedings

Courts - Civil Causes of Action - Theft

This bill establishes a new civil cause of action for damages sustained as a result of a violation of the prohibition on theft under § 7-104 of the Criminal Law Article. A person who proves by clear and convincing evidence that the person has been injured due to the theft violation has a cause of action for the actual damages sustained and may recover the reasonable costs of investigation and litigation, including attorney's fees. A court is also authorized to award punitive damages.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations, including the workload of the Judiciary.

Local Effect: The bill is not anticipated to materially affect local finances or operations, including the workload of the circuit courts.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Prior to filing an action for damages, the person claiming injury must make a written demand for the actual damages to the person liable for the damages (the recipient). If the recipient complies with the demand within 30 days after receipt, the recipient must be given a written release from further civil liability for the specific act of the theft violation by the person making the written demand. However, a person claiming injury may file a request for a waiver of the written demand requirement if the person is

unaware of the extent of the actual damages at the time the person files an action for damages.

Current Law:

General Theft (Section 7-104 of the Criminal Law Article)

Under the general theft statute, a person may not, under specified circumstances, (1) willfully or knowingly obtain or exert unauthorized control over property; (2) obtain control over property by willfully or knowingly using deception; (3) possess stolen personal property knowing that it has been stolen or believing that it probably has been stolen; (4) obtain control over property knowing that the property was lost, mislaid, or delivered under a mistake as to the identity of the recipient or nature or amount of the property; or (5) obtain the services of another that are available only by compensation by deception or with knowledge that the services are provided without the provider's consent. A violator is required to restore the owner's property or pay the owner the value of the property or services and is subject to penalties that vary based on the value of the stolen property or services.

Tort of Conversion

In general, the common law tort of conversion, which is sometimes referred to as the civil equivalent of the crime of theft, allows a person to seek damages for the wrongful exercise of dominion over the property of another. *Lawson v. Commonwealth Land Title Ins. Co.*, 69 Md. App. 476, 480 (1986). While the tort originally only applied to tangible property, its application has since been expanded to include intangible property. *Lawson*, 69 Md. App. at 480. Money can be subject to a conversion claim if the "...plaintiff can allege that the defendant converted specific segregated or identifiable funds." *Allied Investment Corp. v. Jasen*, 354 Md. at 564-65 (1999). Conversion is an intentional tort, requiring a plaintiff to show that the defendant intended to exercise unlawful control over property owned by the plaintiff and committed a physical act to that effect. *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 262 (2004).

Like most civil cases, conversion claims are subject to a "preponderance of the evidence" standard. "Preponderance of the evidence" has been described as requiring evidence sufficient to establish that a fact is "more likely true than not true," "more probable than not," or that amounts to at least 51% of the evidence. "Preponderance of the evidence" is the standard applicable in most civil cases. "Clear and convincing evidence" is evidence that the contention is highly probable. The burden that must be met for the clear and convincing evidentiary standard is greater than a preponderance of the evidence but less than evidence that is "beyond a reasonable doubt."

In general, damages in a conversion claim are the fair market value of the property at the time and place of the conversion. Punitive damages may be awarded in an action for conversion if the defendant acted with “actual malice,” which has been defined as conduct involving evil intent, fraud, ill will, or an intent to injure. *Darcars*, 379 Md. at 266.

In general, a party to a lawsuit is responsible for his/her legal fees, regardless of the outcome of the case. However, there are more than 80 exceptions to this general rule in State law, including wage and hour cases, worker’s compensation cases, and consumer protection cases. The conditions under which an individual is eligible for an award of attorney’s fees and the extent of these awards are inconsistent among these cases.

Background: Exhibit 1 contains fiscal 2019 data on trial court violations and convictions for general theft.

Exhibit 1
Theft Violations and Convictions – District Court and the Circuit Courts
Fiscal 2019

<u>Charge</u>	<u>District Court Violations</u>	<u>District Court Convictions</u>	<u>Circuit Court Violations</u>	<u>Circuit Court Convictions</u>
Theft Less than \$100	12,242	1,444	2,154	149
Theft \$100 to \$1,499	17,598	1,707	5,084	592
Theft \$1,500 to \$24,999	5,857	201	2,501	225
Theft \$25,000 to \$99,999	501	13	109	16
Theft \$100,000+	65	2	47	7
Theft Scheme - \$100 to \$1,499	921	81	218	33
Theft Scheme - \$1,500 to \$24,999	870	60	399	83
Theft Scheme - \$25,000 to \$99,999	64	4	115	15
Theft Scheme - \$100,000+	25	0	47	12

Source: Maryland Judiciary

Florida has a civil theft statute that authorizes a civil action for damages sustained as a result of violations of theft laws and other statutory provisions. The statute authorizes treble

damages, subjects these cases to a clear and convincing evidentiary standard, and contains pleading requirements similar to the ones contained in the bill.

Small Business Effect: The bill may have a meaningful effect on small businesses to the extent that it provides an avenue to pursue damages for stolen assets/property (including punitive damages, reasonable costs, and attorney's fees) that is otherwise unavailable under existing law.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 478 (Delegate Dumais) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); *Maryland Law Encyclopedia*; *Florida Bar Journal*; Department of Legislative Services

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