

# SENATE BILL 732

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HB 1239/15 – JUD

6lr2859

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By: **Senator Norman**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Penalties for Shoplifting and Employee Theft**

3 FOR the purpose of altering requirements for certain demand letters relating to alleged  
4 acts of shoplifting or employee theft; providing that a responsible person who  
5 prevails in a certain civil action is entitled to an award of court costs and reasonable  
6 attorney's fees, under certain circumstances; requiring a court to reduce the amount  
7 of restitution awarded in a certain criminal proceeding by an amount equal to certain  
8 damages and civil penalties; making stylistic changes; and generally relating to civil  
9 penalties for shoplifting and employee theft.

10 BY repealing and reenacting, without amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 3–1301, 3–1302, 3–1304, 3–1307, and 3–1308  
13 Annotated Code of Maryland  
14 (2013 Replacement Volume and 2015 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Courts and Judicial Proceedings  
17 Section 3–1303, 3–1305, and 3–1306  
18 Annotated Code of Maryland  
19 (2013 Replacement Volume and 2015 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

23 Subtitle 13. Civil Penalties for Shoplifting and Employee Theft.

24 3–1301.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

9 (f) "Responsible person" means:

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

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

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

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

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

24 (3) Concealing any merchandise;

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

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

28 (6) Disarming any alarm tag attached to any merchandise.

29 3-1302.

30 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, **INCLUDING THE DATE AND TIME THE ACT IS ALLEGED TO HAVE**  
25 **OCCURRED;**

26 **(II) SPECIFY THE BASIS ON WHICH THE RESPONSIBLE PERSON**  
27 **OR, IF APPLICABLE, THE CHILD OF THE RESPONSIBLE PERSON HAS BEEN ACCUSED**  
28 **OF THE ACT OF SHOPLIFTING OR EMPLOYEE THEFT;**

29 **[(ii)] (III) Specify the amount of damages sought under § 3-1302(1)**  
30 **and (2) of this subtitle;**

1                    [(iii)] (IV) Specify the amount of the civil penalty sought under §  
2 3–1302(3) of this subtitle and explain the method of calculating that amount;

3                    [(iv)] (V) Request payment of the damages and civil penalty by cash,  
4 money order, certified check, or cashier’s check;

5                    [(v)] (VI) Contain a conspicuous notice advising the responsible  
6 person that payment of the damages and civil penalty does not preclude the possibility of  
7 criminal prosecution, but that the payment would not be admissible in any criminal  
8 proceeding as an admission or evidence of guilt; and

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

13                    (VIII) SPECIFY THAT, IF THE RESPONSIBLE PERSON DISPUTES  
14 LIABILITY FOR THE ALLEGED ACT OF SHOPLIFTING OR EMPLOYEE THEFT:

15                    1. THE RESPONSIBLE PERSON MAY REFUSE TO PAY THE  
16 DAMAGES AND CIVIL PENALTY; AND

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

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

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

27                    (2) The second demand letter shall:

28                    (i) Contain the same information, request for payment, and notice  
29 that is required by subsection (b)(2)(i) through [(v)] (VIII) of this section for an initial  
30 demand letter;

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

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

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

8 3-1304.

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

13 3-1305.

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

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

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

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

30 3-1306.

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

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

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

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

7 3–1307.

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

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

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

14 3–1308.

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

18           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2016.