

**78B-3-108 Shoplifting -- Merchant's rights -- Civil liability for shoplifting by adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice required for penalty demand.**

- (1) As used in this section:
  - (a) "Merchandise" has the same meaning as provided in Section 76-6-601.
  - (b) "Merchant" has the same meaning as provided in Section 76-6-601.
  - (c) "Minor" has the same meaning as provided in Section 76-6-601.
  - (d) "Premises" has the same meaning as "retail mercantile establishment" found in Section 76-6-601.
- (2) A merchant may request an individual on the merchant's premises to place or keep in full view any merchandise the individual may have removed, or which the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose. The merchant may not be criminally or civilly liable for having made the request.
- (3) A merchant who has reason to believe that an individual has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and that the merchant can recover the merchandise by taking the individual into custody and detaining the individual may, for the purpose of attempting to recover the merchandise or for the purpose of informing a peace officer of the circumstances of the detention, take the individual into custody and detain the individual in a reasonable manner and for a reasonable length of time. Neither the merchant nor the merchant's employee may be criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.
- (4)
  - (a) A merchant may prohibit an individual who has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii) from reentering the premises on which the individual has committed the offense.
  - (b) The merchant shall give written notice of this prohibition to the individual under Subsection (4)
    - (a). The notice may be served by:
      - (i) delivering a copy to the individual personally;
      - (ii) sending a copy through registered or certified mail addressed to the individual at the individual's residence or usual place of business;
      - (iii) leaving a copy with an individual of suitable age and discretion at either location under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or place of business if the individual is absent from the residence or usual place of business; or
      - (iv) affixing a copy in a conspicuous place at the individual's residence or place of business.
    - (c) The individual serving the notice may authenticate service with the individual's signature, the method of service, and legibly documenting the date and time of service.
- (5) An adult who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is also liable in a civil action for:
  - (a) actual damages;
  - (b) a penalty to the merchant in the amount of the retail price of the merchandise not to exceed \$1,000; and
  - (c) an additional penalty as determined by the court of not less than \$100 nor more than \$500, plus court costs and reasonable attorney fees.
- (6) A minor who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and severally liable in a civil action to the merchant for:

- (a) actual damages;
  - (b) a penalty to be remitted to the merchant in the amount of the retail price of the merchandise not to exceed \$500 plus an additional penalty as determined by the court of not less than \$50 nor more than \$500; and
  - (c) court costs and reasonable attorney fees.
- (7) A parent or guardian is not liable for damages under this section if the parent or guardian made a reasonable effort to restrain the wrongful taking and reported it to the merchant involved or to the law enforcement agency having primary jurisdiction once the parent or guardian knew of the minor's unlawful act. A report is not required under this section if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the merchant involved.
- (8) A conviction in a criminal action for any of the offenses listed in Subsection 76-6-412(1)(b)(ii) (A), (B), or (C) is not a condition precedent to a civil action authorized under Subsection (5) or (6).
- (9)
- (a) A merchant demanding payment of a penalty under Subsection (5) or (6) shall give written notice to the individual or individuals from whom the penalty is sought. The notice shall state:  
"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."
  - (b) This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of the penalty described in Subsection (5) or (6).
- (10) The provision of Section 78B-8-201 requiring that compensatory or general damages be awarded in order to award punitive damages does not prohibit an award of a penalty under Subsection (5) or (6) whether or not restitution has been paid to the merchant either prior to or as part of a civil action.

Amended by Chapter 257, 2012 General Session