

Representative Paul Ray proposes the following substitute bill:

THEFT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding multiple theft offenses.

Highlighted Provisions:

This bill:

- ▶ enhances the penalty for an individual who returns and commits theft again at a property where the individual has previously been prohibited from returning;
- ▶ amends the penalty for theft offenses if the defendant has committed two prior theft offenses within the prior five years;
- ▶ authorizes a merchant to prohibit an individual who has committed retail theft from reentering the property on which the individual committed theft; and
- ▶ specifies how a merchant may give written notice prohibiting an individual who has previously committed retail theft from reentering the property.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **76-6-412**, as last amended by Laws of Utah 2010, Chapter 193

27 **78B-3-108**, as enacted by Laws of Utah 2008, Chapter 3

28

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **76-6-412** is amended to read:

31 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

32 (1) Theft of property and services as provided in this chapter is punishable:

33 (a) as a second degree felony if the:

34 (i) value of the property or services is or exceeds \$5,000;

35 (ii) property stolen is a firearm or an operable motor vehicle;

36 (iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the
37 time of the theft; or

38 (iv) property is stolen from the person of another;

39 (b) as a third degree felony if:

40 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

41 (ii) the actor has been twice before convicted of any of the offenses listed in this

42 Subsection (1)(b)(ii), if each prior offense was committed within 10 years of the date of the
43 current conviction or the date of the offense upon which the current conviction is based:

44 (A) any theft, any robbery, or any burglary with intent to commit theft;

45 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

46 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B).

47 (iii) in a case not amounting to a second-degree felony, the property taken is a stallion,
48 mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,
49 poultry, or a fur-bearing animal raised for commercial purposes;

50 (iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;

51 (B) the theft occurs on a property where the offender has committed any theft within
52 the past five years; and

53 (C) the offender has received written notice from the merchant prohibiting the offender
54 from entering the property pursuant to Section 78B-3-108; or

55 (c) as a class A misdemeanor if:

56 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500; [or]

57 (ii) (A) the value of property or services is less than \$500;
 58 (B) the theft occurs on a property where the offender has committed any theft within
 59 the past five years; and
 60 (C) the offender has received written notice from the merchant prohibiting the offender
 61 from entering the property pursuant to Section 78B-3-108; or
 62 (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and
 63 the theft is not an offense under Subsection (1)(c).

64 (2) Any [~~person~~] individual who violates Subsection 76-6-408(1) or Section 76-6-413,
 65 or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for
 66 three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit
 67 and reasonable attorney fees.

68 Section 2. Section **78B-3-108** is amended to read:

69 **78B-3-108. Shoplifting -- Merchant's rights -- Civil liability for shoplifting by**
 70 **adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice**
 71 **required for penalty demand.**

72 (1) As used in this section:

73 (a) "Merchandise" has the same meaning as provided in Section 76-6-601.

74 (b) "Merchant" has the same meaning as provided in Section 76-6-601.

75 (c) "Minor" has the same meaning as provided in Section 76-6-601.

76 (d) "Premises" has the same meaning as "retail mercantile establishment" found in
 77 Section 76-6-601.

78 ~~[(e) "Wrongful taking of merchandise" has the same meaning as "retail theft" as~~
 79 ~~described in Section 76-6-602.]~~

80 (2) A merchant may request an individual on [~~his~~] the merchant's premises to place or
 81 keep in full view any merchandise the individual may have removed, or which the merchant
 82 has reason to believe the individual may have removed, from its place of display or elsewhere,
 83 whether for examination, purchase, or for any other reasonable purpose. The merchant may not
 84 be criminally or civilly liable for having made the request.

85 (3) A merchant who has reason to believe that [~~merchandise has been wrongfully taken~~
 86 ~~by~~] an individual has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A),
 87 (B), or (C) and that the merchant can recover the merchandise by taking the individual into

88 custody and detaining the individual may, for the purpose of attempting to recover the
89 merchandise or for the purpose of informing a peace officer of the circumstances of the
90 detention, take the individual into custody and detain the individual in a reasonable manner and
91 for a reasonable length of time. Neither the merchant nor the merchant's employee may be
92 criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or
93 for any other type of claim or action unless the custody and detention are unreasonable under
94 all the circumstances.

95 (4) (a) A merchant may prohibit an individual who has committed any of the offenses
96 listed in Subsection 76-6-412(1)(b)(ii) from reentering the premises on which the individual
97 has committed the offense.

98 (b) The merchant shall give written notice of this prohibition to the individual under
99 Subsection (4)(a). The notice may be served by:

100 (i) delivering a copy to the individual personally;

101 (ii) sending a copy through registered or certified mail addressed to the individual at
102 the individual's residence or usual place of business;

103 (iii) leaving a copy with an individual of suitable age and discretion at either location
104 under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or
105 place of business if the individual is absent from the residence or usual place of business; or

106 (iv) affixing a copy in a conspicuous place at the individual's residence or place of
107 business.

108 (c) The individual serving the notice may authenticate service with the individual's
109 signature, the method of service, and legibly documenting the date and time of service.

110 [(4)] (5) An adult who [wrongfully takes merchandise] commits any of the offenses
111 listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is also liable in a civil action[; in
112 addition to] for:

113 (a) actual damages[; for];

114 (b) a penalty to the merchant in the amount of the retail price of the merchandise not to
115 exceed \$1,000[; plus]; and

116 (c) an additional penalty as determined by the court of not less than \$100 nor more than
117 \$500, plus court costs and reasonable attorney fees.

118 [(5)] (6) A minor who [wrongfully takes merchandise] commits any of the offenses

119 listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and the minor's parents or legal guardian
120 are jointly and severally liable in a civil action to the merchant for:

121 (a) actual damages;

122 (b) a penalty to be remitted to the merchant in the amount of the retail price of the
123 merchandise not to exceed \$500 plus an additional penalty as determined by the court of not
124 less than \$50 nor more than \$500; and

125 (c) court costs and reasonable attorney fees.

126 ~~[(6)]~~ (7) A parent or guardian is not liable for damages under this section if the parent
127 or guardian made a reasonable effort to restrain the wrongful taking and reported it to the
128 merchant involved or to the law enforcement agency having primary jurisdiction once the
129 parent or guardian knew of the minor's unlawful act. A report is not required under this section
130 if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of
131 the merchant involved.

132 ~~[(7)]~~ (8) A conviction in a criminal action ~~[of shoplifting]~~ for any of the offenses listed
133 in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is not a condition precedent to a civil action
134 authorized under Subsection ~~[(4) or]~~ (5) or (6).

135 ~~[(8)]~~ (9) (a) A merchant demanding payment of a penalty under Subsection ~~[(4) or]~~ (5)
136 or (6) shall give written notice to the ~~[person or persons]~~ individual or individuals from whom
137 the penalty is sought. The notice shall state:

138 "IMPORTANT NOTICE: The payment of any penalty demanded of you does not
139 prevent criminal prosecution under a related criminal provision."

140 (b) This notice shall be boldly and conspicuously displayed, in at least the same size
141 type as is used in the demand, and shall be sent with the demand for payment of the penalty
142 described in Subsection ~~[(4) or]~~ (5) or (6).

143 ~~[(9)]~~ (10) The provision of Section 78B-8-201 requiring that compensatory or general
144 damages be awarded in order to award punitive damages does not prohibit an award of a
145 penalty under Subsection ~~[(4) or]~~ (5) or (6) whether or not restitution has been paid to the
146 merchant either prior to or as part of a civil action.