

60-3331. Civil penalty against shoplifter; parental liability for minor; amount; attorney fees and costs; demand for reimbursement; other remedies not precluded. (a) Except as otherwise provided, a merchant may file a civil action to recover a civil penalty against any person who shoplifts from that merchant. If the merchant does not recover the merchandise in merchantable condition, the merchant shall be entitled to a civil penalty for an amount equal to twice the retail cost of the merchandise, or \$50, whichever is greater, but in no case shall such civil penalty be more than \$500. If the merchant recovers the merchandise in merchantable condition, the merchant shall be entitled to a civil penalty of \$50 or 50% of the retail cost of the merchandise, whichever is greater, but in no case shall such civil penalty be more than \$350.

(b) Except as provided further, if the person who shoplifts is an unemancipated minor, the parent of such minor, shall be civilly liable pursuant to a civil action filed as authorized in subsection (a) in an amount of the civil penalty as prescribed in subsection (a). If the merchant recovers the merchandise in merchantable condition, the civil penalty against the parent, as provided in this subsection, shall be \$50.

(c) Unless the action is brought pursuant to the Kansas small claims act and a final judgment is rendered in small claims court, the prevailing party in such action brought pursuant to this section shall be entitled to reasonable attorney fees and costs. If the action is brought in small claims court and the judgment is appealed to district court pursuant to chapter 60 of the Kansas Statutes Annotated or K.S.A. 61-2709 and amendments thereto, the prevailing party on appeal shall be entitled to reasonable attorney fees and costs.

(d) A conviction or a plea of guilty to the offense of theft which would constitute shoplifting or an adjudication as a juvenile offender or an adjudication as a child in need of care for committing an offense while a juvenile which if committed by an adult would constitute the commission of the offense of theft which would constitute shoplifting is not a prerequisite to the filing of a civil action under this section.

(e) Prior to filing a civil action under this section, a merchant damaged by shoplifting shall demand that an individual alleged to be civilly liable under this act reimburse such merchant in an amount of the civil penalty as prescribed in subsection (a). Such demand shall be in writing and offered in consideration for the merchant's agreement not to commence a civil action under this section. Such demand shall not contain a threat of criminal prosecution against such individual. Any merchant who makes a demand with a threat of criminal prosecution against such individual shall be precluded from filing a civil action under this section and pursuing any other remedy at law or equity. A demand pursuant to this subsection shall be a prerequisite to filing a civil action under this section, but no demand may be made which does not comply with this subsection.

(f) Nothing contained in this act shall be construed to preclude a merchant from pursuing any other remedy at law or equity prior to filing an action under this act.

(g) For purposes of this act, "shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the intent of appropriating merchandise to that person's or another'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 the premises of the merchant's establishment;
- (2) concealing any merchandise with intent to leave the premises with the merchandise;
- (3) substituting, altering, removing or disfiguring any label or price tag;
- (4) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; or
- (5) disarming any alarm tag attached to any merchandise.

(h) A civil penalty, claim or judgment under the provisions of this section shall not constitute an obligation or liability against any insurer or third-party payor.

History: L. 1993, ch. 98, § 1; L. 2002, ch. 156, § 1; July 1.