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# Civil Shoplifting Statutes by State

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## CIVIL SHOPLIFTING STATUTES BY STATE

*Compiled by Ryan P. Sullivan, Assistant Professor of Law  
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What follows is a collection of state statutes that provide merchants a civil remedy against individuals accused of shoplifting.

For additional information on civil shoplifting statutes see:

National Survey of State Laws, <http://heinonline.org/HOL/Index?collection=nssl>, search: Civil Shoplifting Statutes

Ryan P. Sullivan, et al., *Stolen Profits: Civil Shoplifting Demands and the Misuse of NEB. REV. STAT. § 25-21,194*, Neb. L. Rev. (forthcoming August 2016)

This collection of state shoplifting statutes was last updated February 8, 2016.

### **Alabama**

Ala. § 6-5-270 et. seq.

#### **§ 6-5-271. Civil liability generally.**

(a) An adult or emancipated minor who commits or attempts to commit a theft of property consisting of goods for sale on the premises of a merchant in violation of Sections 13A-8-3, 13A-8-4, or 13A-8-5, shall be civilly liable to the merchant in an amount consisting of all of the following:

- (1) The full retail value of the merchandise if not recovered in merchantable condition at its full retail price.
- (2) Expenses for recovery of the merchandise in the amount of \$200.
- (3) Reasonable attorney's fees and court costs not to exceed \$1000.

(b) Parents or legal guardians of an unemancipated minor under the age of 19 shall be liable in a civil action for the minor who commits or attempts to commit a theft of property consisting of goods for sale on the premises of a merchant in violation of Sections 13A-8-3, 13A-8-4, or 13A-8-5, to the merchant in an amount consisting of all of the following:

- (1) The full retail value of the merchandise if not recovered in merchantable condition at its full retail price.
- (2) Expenses for recovery of the merchandise in the amount of \$200.
- (3) Reasonable attorney's fees and court costs not to exceed \$1000.
- (4) Parents or legal guardians of an unemancipated minor under the age of 19 shall only be liable in a civil action in any calendar year for up to three offenses under the provisions of this article with a maximum liability of \$750 for each offense.

(c) A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves with the intent to defraud the eating establishment, without paying for the meal is subject to liability under this section, if such meal is received by the customer in a good and merchantable condition.

(d) Persons operating a certified foster home are not liable under this section for the acts of children not related to them by blood or marriage who are under their care, nor shall parents or legal guardians whose child is not living with them or where the juvenile violates Sections 13A-8-3, 13A-8-4 or 13A-8-5, with the intent to make the parent or legal guardian liable, be held liable under this article.

#### **§ 6-5-272. Conviction not prerequisite — Demand for remittance.**

(a) A conviction or a plea of guilty to the criminal offense of theft of property as defined in Title 13A, Chapter 8, is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this article.

(b) The fact that a merchant may bring a civil action against an individual as provided in this article shall not limit the right of the merchant to demand, in writing as set out in subsection (c) below, that a person who is liable for damages and penalties under this article remit the damages and penalties prior to the consideration of the commencement of any legal action.

(c) The demand letter must be prepared and include the following:

On (insert date), you were apprehended for taking possession of, without paying for, merchandise belonging to (name of retailer/merchant).

Under Alabama statute, a retailer/merchant is granted a civil cause of action against the person who intentionally deprives or intends to deprive a retailer/merchant of any merchandise without paying for it. The statute further provides that, separate from, and in addition to, any criminal action arising from your conduct, you may be held civilly liable for:

- (a) Cost of merchandise, if damaged;
- (b) Expenses for the recovery of the merchandise of \$200; and
- (c) Court costs and reasonable attorneys' fees.

This letter represents a demand from you for \$ (amount) as a means of satisfying this civil matter.

We do not wish to file a civil action against you. However, if we do not receive payment within 30 days from the date of this letter, we will make every effort to enforce our rights under this statute, which may include a civil court action.

#### **§ 6-5-273. Jurisdiction.**

An action for recovery of damages and penalties under this article may be brought in any court of competent jurisdiction, including the small claims division of a district court in the county where the merchant is located, if the person or the parent or legal guardian of the unemancipated minor who committed the theft offense fails to make payment to the merchant of the amount specified in the demand within 30 days after the date of service of the written demand upon him or her, if the total damages do not exceed the jurisdictional limit of the small claims division.

#### **§ 6-5-274. Attorney's fees.**

No attorney's fees shall be charged or collected unless a civil action has been filed under the provisions of this article.

## **Alaska**

### **Sec. 09.68.110. Civil liability for shoplifting**

- (a) A person who has attained the age of 18 years or an emancipated minor who shoplifts merchandise is, in addition to any criminal penalty provided by law, liable in a civil action to the owner or seller of the merchandise for all of the following:
  - (1) actual damages;
  - (2) a penalty equal to the retail value of the merchandise or \$ 1,000, whichever is less; and
  - (3) a penalty of not less than \$ 100 nor more than \$ 200.
- (b) A person having legal custody of an unemancipated minor who shoplifts merchandise is liable in a civil action to the owner or seller of the merchandise for both of the following:
  - (1) a penalty equal to the retail value of the merchandise or \$ 500, whichever is less; and
  - (2) a penalty of not less than \$ 100 nor more than \$ 200.
- (c) It is a condition precedent to maintaining an action under this section that the owner or seller of the merchandise send a notice demanding the relief authorized to the defendant by first class mail at the defendant's last known address 15 days or more before the action is commenced. The Department of Law may adopt regulations prescribing the form of this notice. It is not a condition precedent to maintaining an action under this section that the person who shoplifted merchandise was charged or convicted under any statute or ordinance.
- (d) Judgments, but not claims, arising under this section may be assigned.
- (e) For purposes of this section, a person "shoplifts merchandise" if, without authority and with intent to deprive the owner of the merchandise,
  - (1) the person removes the merchandise of a commercial establishment, not purchased by the person, from the premises of the commercial establishment;
  - (2) the person knowingly conceals on, in, or about the person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment; or
  - (3) the person knowingly substitutes or alters a price ticket in order to pay less than the indicated retail price.
- (f) Merchandise found concealed on or about the person which has not been purchased by the person is prima facie evidence of a knowing concealment for purposes of (e)(2) of this section.
- (g) The liability of a person for damages and penalties under this section is in addition to liability for an award of reasonable attorney fees that may be made to the prevailing party in a civil action under Rule 82, Alaska Rules of Civil Procedure.

(h) In this section, "emancipated minor" means a minor whose disabilities have been removed for general purposes under AS 09.55.590.

## Arizona

### **12-691. Civil liability for shoplifting; adult; emancipated minor**

An adult or emancipated minor who commits shoplifting as defined by section 13-1805 is civilly liable to the owner of the obtained goods for all of the following:

1. A penalty in the amount of the retail value of the obtained goods.
2. For an adult, an additional penalty of at least two hundred fifty dollars but not more than two hundred fifty dollars plus the actual damages to the owner.
3. For an emancipated minor, an additional penalty of at least one hundred dollars but not more than one hundred dollars plus the actual damages to the owner.

### **12-692. Shoplifting by unemancipated minor; liability of parent or guardian; foster parents**

A. The parents or legal guardians having custody or control of an unemancipated minor who commits shoplifting as defined by section 13-1805 are civilly liable to the owner of the obtained goods for all of the following:

1. A penalty in the amount of the retail value of the obtained goods.
2. An additional penalty of not less than one hundred dollars nor more than one hundred dollars plus the actual damages to the owner.

B. Foster parents are not liable under subsection A of this section for the acts of children placed with them pursuant to title 8, chapter 4, article 4 or 5.

### **12-693. Conviction for shoplifting; admissibility**

A conviction for shoplifting under section 13-1805 is not required to maintain an action pursuant to this article. An adjudication of not guilty of violation of section 13-1805 is admissible in an action for civil liability under sections 12-691 and 12-692. A person convicted for shoplifting under section 13-1805 is precluded from subsequently denying the essential allegations of the offense in any action pursuant to this article. For the purposes of this section, a conviction may result from a verdict or a plea including a no contest plea.

### **12-694. Bringing action; court**

An action for recovery of damages under this article may be brought in any court of competent jurisdiction, including the small claims division of a justice court, if the total actual damages and penalties do not exceed the jurisdictional limit of the court.

## Arkansas

### **16-122-101. Liability of adult, employee, and parent.**

(a) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be subject to civil damages and penalties as set forth in § 16-122-102.

(b) An employee who takes possession of any cash, goods, wares, or merchandise without the consent of the owner or seller, and with the intent of converting such cash, goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be subject to civil damages and penalties as set forth in § 16-122-102 in addition to the actual amount of any cash not returned or recovered.

(c)

(1) The parent or legal guardian having custody of an unemancipated minor under the age of eighteen (18) and over the age of six (6) who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intent of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be subject to civil damages and penalties as set forth in § 16-122-102; provided, that for the purpose of this subsection liability shall not be imposed upon any government entity or private agency which has been assigned any responsibility for the minor child pursuant to court order or action of the Department of Human Services.

(2) However, no parent or legal guardian shall be civilly liable under the provisions of this subsection for any offense committed by an unemancipated minor under the age of eighteen (18) and over the age of six (6) who has not been in his or her physical custody for the thirty (30) days preceding the offense.

**16-122-102. Written demand required -- Amount of damages.**

(a) Under the provisions of this subchapter, the owner or seller shall issue a written demand letter by certified mail for the return of the merchandise or, only if the merchandise has not been returned or recovered, its retail cash equivalent, and a penalty in the amount of two hundred dollars (\$200) for an adult to the last known address of the adult.

(b) If the individual to whom the written demand is sent complies with the terms of the demand letter within thirty (30) days of the receipt of the letter, that individual shall not be subject to further civil liability with respect to that specific act of retail theft.

(c)

(1) If the individual to whom the written demand is sent does not comply within thirty (30) days of the receipt of a demand letter, then the owner or seller may bring an action against the individual for the recovery of civil damages and penalties in any court of competent jurisdiction if the total damages do not exceed the jurisdictional limit of that court.

(2) In an action brought under this subsection, the owner or seller may recover the following:

(A) Civil damages in an amount equal to the retail value of the merchandise if the merchandise is not recovered or returned or if the merchandise is recovered or returned, civil damages in an amount equal to the difference between the market value of the recovered or returned merchandise and the retail value of the recovered or returned merchandise;

(B) A civil penalty of up to one thousand dollars (\$1,000) for an adult;

(C) Court costs; and

(D) A reasonable attorney's fee.

(d) This section does not apply to juveniles subject to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

**16-122-103. Penalty.**

A conviction for violation of § 5-36-103 shall not be a condition precedent to maintenance of a civil action authorized by this subchapter and nothing in this subchapter shall prohibit or limit any other course of action a retailer or merchant may have against a person who unlawfully takes cash, goods, wares, or merchandise from the merchant's premises.

## **California**

**§ 490.5. Petty theft of property from merchant or library**

(a) Upon a first conviction for petty theft involving merchandise taken from a merchant's premises or a book or other library materials taken from a library facility, a person shall be punished by a mandatory fine of not less than fifty dollars (\$50) and not more than one thousand dollars (\$1,000) for each such violation; and may also be punished by imprisonment in the county jail, not exceeding six months, or both such fine and imprisonment.

(b) When an unemancipated minor's willful conduct would constitute petty theft involving merchandise taken from a merchant's premises or a book or other library materials taken from a library facility, any merchant or library facility who has been injured by that conduct may bring a civil action against the parent or legal guardian having control and custody of the minor. For the purposes of those actions the misconduct of the unemancipated minor shall be imputed to the parent or legal guardian having control and custody of the minor. The parent or legal guardian having control or custody of an unemancipated minor whose conduct violates this subdivision shall be jointly and severally liable with the minor to a merchant or to a library facility for damages of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), plus costs. In addition to the foregoing damages, the parent or legal guardian shall be jointly and severally liable with the minor to the merchant for the retail value of the merchandise if it is not recovered in a merchantable condition, or to a library facility for the fair market value of its book or other library materials. Recovery of these damages may be had in addition to, and is not limited by, any other provision of law which limits the liability of a parent or legal guardian for the tortious conduct of a minor. An action for recovery of damages, pursuant to this subdivision, may be brought in small claims court if the total damages do not exceed the jurisdictional limit of that court, or in any other appropriate court; however, total damages, including the value of the merchandise or book or other library materials, shall not exceed five hundred dollars (\$500) for each action brought under this section.

The provisions of this subdivision are in addition to other civil remedies and do not limit merchants or other persons to elect to pursue other civil remedies, except that the provisions of Section 1714.1 of the Civil Code shall not apply herein.

(c) When an adult or emancipated minor has unlawfully taken merchandise from a merchant's premises, or a book or other library materials from a library facility, the adult or emancipated minor shall be liable to the merchant or library facility for damages of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), plus costs. In addition to the foregoing damages, the adult or emancipated minor shall be liable to the merchant for the retail value of the merchandise if it is not recovered in merchantable condition, or to a library facility for the fair market value of its book or other library materials. An action for recovery of damages, pursuant to this subdivision, may be brought in small claims court if the total damages do not exceed the jurisdictional limit of such court, or in any other appropriate court. The provisions of this subdivision are in addition to other civil remedies and do not limit merchants or other persons to elect to pursue other civil remedies.

(d) In lieu of the fines prescribed by subdivision (a), any person may be required to perform public services designated by the court, provided that in no event shall any such person be required to perform less than the number of hours of such public service necessary to satisfy the fine assessed by the court as provided by subdivision (a) at the minimum wage prevailing in the state at the time of sentencing.

(e) All fines collected under this section shall be collected and distributed in accordance with Sections 1463 and 1463.1 of the Penal Code; provided, however, that a county may, by a majority vote of the members of its board of supervisors, allocate any amount up to, but not exceeding 50 percent of such fines to the county superintendent of schools for allocation to local school districts. The fines allocated shall be administered by the county superintendent of schools to finance public school programs, which provide counseling or other educational services designed to discourage shoplifting, theft, and burglary. Subject to rules and regulations as may be adopted by the Superintendent of Public Instruction, each county superintendent of schools shall allocate such funds to school districts within the county which submit project applications designed to further the educational purposes of this section. The costs of administration of this section by each county superintendent of schools shall be paid from the funds allocated to the county superintendent of schools.

(f)

(1) A merchant may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the merchant has probable cause to believe the person to be detained is attempting to unlawfully take or has unlawfully taken merchandise from the merchant's premises.

A theater owner may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the theater owner has probable cause to believe the person to be detained is attempting to operate a video recording device within the premises of a motion picture theater without the authority of the owner of the theater.

A person employed by a library facility may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the person employed by a library facility has probable cause to believe the person to be detained is attempting to unlawfully remove or has unlawfully removed books or library materials from the premises of the library facility.

(2) In making the detention a merchant, theater owner, or a person employed by a library facility may use a reasonable amount of nondeadly force necessary to protect himself or herself and to prevent escape of the person detained or the loss of tangible or intangible property.

(3) During the period of detention any items which a merchant or theater owner, or any items which a person employed by a library facility has probable cause to believe are unlawfully taken from the premises of the merchant or library facility, or recorded on theater premises, and which are in plain view may be examined by the merchant, theater owner, or person employed by a library facility for the purposes of ascertaining the ownership thereof.

(4) A merchant, theater owner, a person employed by a library facility, or an agent thereof, having probable cause to believe the person detained was attempting to unlawfully take or has taken any item from the premises, or was attempting to operate a video recording device within the premises of a motion picture theater without the authority of the owner of the theater, may request the person detained to voluntarily surrender the item or recording. Should the person detained refuse to surrender the recording or item of which there is probable cause to believe has been recorded on or unlawfully taken from the premises, or attempted to be recorded or unlawfully taken from the premises, a limited and reasonable search may be conducted by those authorized to make the detention in order to recover the item. Only packages, shopping bags, handbags or other property in the immediate possession of the person detained, but not including any clothing worn by the person, may be searched pursuant to this subdivision. Upon surrender or discovery of the item, the person detained may also be requested, but may not be required, to provide adequate proof of his or her true identity.

(5) If any person admitted to a theater in which a motion picture is to be or is being exhibited, refuses or fails to give or surrender possession or to cease operation of any video recording device that the person has brought into or attempts to bring into that theater, then a theater owner shall have the right to refuse admission to that person or request that the person leave the premises and shall thereupon offer to refund and, unless that offer is refused, refund to that person the price paid by that person for admission to that theater. If the person thereafter refuses to leave the theater or cease operation of the video recording device, then the person shall be deemed to be intentionally interfering with and obstructing those attempting to carry on a lawful business within the meaning of Section 602.1.

(6) A peace officer who accepts custody of a person arrested for an offense contained in this section may, subsequent to the arrest, search the person arrested and his or her immediate possessions for any item or items alleged to have been taken.

(7) In any civil action brought by any person resulting from a detention or arrest by a merchant, it shall be a defense to such action that the merchant detaining or arresting such person had probable cause to believe that the person had stolen or attempted to steal merchandise and that the merchant acted reasonably under all the circumstances.

In any civil action brought by any person resulting from a detention or arrest by a theater owner or person employed by a library facility, it shall be a defense to that action that the theater owner or person employed by a library facility detaining or arresting that person had probable cause to believe that the person was attempting to operate a video recording device within the premises of a motion picture theater without the authority of the owner of the theater or had stolen or attempted to steal books or library materials and that the person employed by a library facility acted reasonably under all the circumstances.

(g) As used in this section:

(1) "Merchandise" means any personal property, capable of manual delivery, displayed, held or offered for retail sale by a merchant.

(2) "Merchant" means an owner or operator, and the agent, consignee, employee, lessee, or officer of an owner or

(3) "Theater owner" means an owner or operator, and the agent, employee, consignee, lessee, or officer of an owner or operator, of any premises used for the exhibition or performance of motion pictures to the general public.

(4) The terms "book or other library materials" include any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audiovisual material in any format, magnetic or other tape, electronic data-processing record, artifact, or other documentary, written or printed material regardless of physical form or characteristics, or any part thereof, belonging to, on loan to, or otherwise in the custody of a library facility.

(5) The term "library facility" includes any public library; any library of an educational, historical or eleemosynary institution, organization or society; any museum; any repository of public records.

(h) Any library facility shall post at its entrance and exit a conspicuous sign to read as follows:

"IN ORDER TO PREVENT THE THEFT OF BOOKS AND LIBRARY MATERIALS, STATE LAW AUTHORIZES THE DETENTION FOR A REASONABLE PERIOD OF ANY PERSON USING THESE FACILITIES SUSPECTED OF COMMITTING "LIBRARY THEFT" (PENAL CODE SECTION 490.5)."

## Colorado

### 13-21-107.5. Civil damages for loss caused by theft

(1) As used in this section, unless the context otherwise requires:

(a) "Emancipated minor" means an individual under the age of eighteen years whose parents or guardian have surrendered parental responsibilities or custody, the right to the care, and earnings of such individual and are no longer under a duty to support or maintain such individual.

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

(c) "Merchandise" means all things movable and capable of manual delivery and offered for sale either at retail or wholesale.

(2) An adult or an emancipated minor who takes possession of any merchandise from any mercantile establishment without the consent of the owner, without paying the purchase price, and with the intention of converting such merchandise to his own use or who alters the price indicia of any merchandise shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of not less than one hundred dollars nor more than two hundred fifty dollars.

(3) The parents or guardian having custody of or parental responsibilities with respect to an unemancipated minor who takes possession of any merchandise from any mercantile establishment without the consent of the owner,

without paying the purchase price, and with the intention of converting such merchandise to his own use or who alters the price indicia of any merchandise shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of not less than one hundred dollars nor more than two hundred fifty dollars.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, any person who, without the consent of the owner, takes possession of a shopping cart from any mercantile establishment with the intent to convert such shopping cart to his own use or the use of another shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of one hundred dollars.

(5) A conviction for theft pursuant to part 4 of article 4 of title 18, C.R.S., shall not be a condition precedent to maintaining a civil action pursuant to the provisions of this section.

(6) Civil liability pursuant to the provisions of this section shall not be subject to the limitations on liability in section 13-21-107 or any other law that limits the liability of parents of an unemancipated minor for damages caused by such unemancipated minor.

## Connecticut

### **Sec. 52-564a. Liability for shoplifting.**

(a) Any person eighteen years of age or older or an emancipated minor who takes possession of goods or merchandise displayed or offered for sale by any mercantile establishment, or who takes from any real property any agricultural produce kept, grown or raised on the property for purposes of sale, without the consent of the owner and with the intention of converting such goods, merchandise or produce to his own use without having paid the purchase price thereof, or who alters the price indicia of such goods or merchandise, shall be liable in a civil action to the owner of the goods, merchandise or produce for (1) the actual and reasonable costs of maintaining the action, including court costs and a reasonable attorney's fee, (2) the retail value of the goods, merchandise or produce taken, if not recovered by the time of the commencement of the action or if recovered in an unmerchantable condition, and (3) punitive damages in an amount not to exceed three hundred dollars.

(b) A conviction of larceny by shoplifting, as defined in subdivision (9) of section 53a-119, shall not be a condition precedent to the maintenance of a civil action under this section.

(c) In any action brought pursuant to subsection (a) of this section, if the plaintiff does not prevail, the court may award to the defendant his costs, including a reasonable attorney's fee, and damages not to exceed three hundred dollars.

(d) No action shall be brought pursuant to subsection (a) of this section but within two years from the date of the act complained of.

### **Sec. 52-572. Parental liability for torts of minors.**

(a) The parent or parents or guardian, other than a temporary guardian appointed pursuant to section 45a-622, of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults.

(b) This section shall not be construed to relieve the minor or minors from personal liability for the damage or injury.

(c) The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.

(d) As used in this section, "damage" shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof.

## Delaware

10 Del. C. § 8143

### **§ 8143. Limitations on civil actions for recovery for shoplifting**

(a)

(1) Before a civil action may be commenced, the merchants may send a notice to the defendant's last known address requesting that the defendant or the parent/guardian of a minor if the defendant is a minor make payment of the sums listed in paragraph (a)(2) of this section within 20 days of the date of the letter. It is not a condition precedent to maintaining an action under this section that the defendant has been convicted of shoplifting or theft or that a police report has been filed.



(2) No civil action under this section may be maintained if the defendant has paid the merchant a penalty equal to the retail value of the merchandise where the merchandise was not recovered in its original condition, plus a penalty in the amount of the retail value of the merchandise or \$ 150, whichever is greater, within 20 days of the date of the initial demand letter. If the merchandise is recovered in merchantable condition, no civil action under this section may be maintained if the defendant has paid the merchant a penalty equal to the retail value of the merchandise attempted to be taken or \$ 150, whichever is greater, within 20 days of the date of the initial demand letter. Should the defendant fail to respond in a timely manner as described above, the merchant may request reasonable attorneys' fees in addition to the amounts described above and shall be entitled to recover costs of suit and reasonable attorneys' fees upon filing of an action.

(b) If the person to whom a written demand is made complies with such demand within 20 days of the date of the demand, that person shall be given a written release from further civil liability with respect to the specific act of shoplifting or theft.

(c) Parents or legal guardians of an unemancipated minor who triggers the liability portion of this section shall be jointly and severally liable civilly to the merchant. For purposes of this subsection, liability shall not be imposed upon any governmental entity or foster parents assigned responsibility for the minor child pursuant to a court order or action of any governmental agency.

## **District of Columbia**

### **§ 27-102. Liability and damages.**

(a) Anyone who commits an offense of fraud, shoplifting, or theft from a merchant shall be civilly liable to the merchant for treble the amount of actual damages; and

(1) The retail value of any goods or merchandise stolen if the goods or merchandise are not recovered;

(2) The loss of value of the goods or merchandise stolen if the goods or merchandise are recovered; or

(3) A minimum of \$50 in damages, whichever is greater.

(b) The parent or guardian shall be liable for any acts or offenses committed by a juvenile under this subchapter.

## **Florida**

### **§ 772.11. Civil remedy for theft or exploitation.**

(1) Any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of ss. 812.012-812.037 or s. 825.103(1) has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts. Before filing an action for damages under this section, the person claiming injury must make a written demand for \$200 or the treble damage amount of the person liable for damages under this section. If the person to whom a written demand is made complies with such demand within 30 days after receipt of the demand, that person shall be given a written release from further civil liability for the specific act of theft or exploitation by the person making the written demand. Any person who has a cause of action under this section may recover the damages allowed under this section from the parents or legal guardian of any unemancipated minor who lives with his or her parents or legal guardian and who is liable for damages under this section. Punitive damages may not be awarded under this section. The defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim that was without substantial fact or legal support. In awarding attorney's fees and costs under this section, the court may not consider the ability of the opposing party to pay such fees and costs. This section does not limit any right to recover attorney's fees or costs provided under any other law.

(2) For purposes of a cause of action arising under this section, the term "property" does not include the rights of a patient or a resident or a claim for a violation of such rights.

(3) This section does not impose civil liability regarding the provision of health care, residential care, long-term care, or custodial care at a licensed facility or care provided by appropriately licensed personnel in any setting in which such personnel are authorized to practice.

(4) The death of an elderly or disabled person does not cause the court to lose jurisdiction of any claim for relief for theft or exploitation when the victim of the theft or exploitation is an elderly or disabled person.

(5) In a civil action under this section in which an elderly or disabled person is a party, the elderly or disabled person may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the party, may advance the trial on the docket. The motion may be filed and served with the civil complaint or at any time thereafter.

**§ 772.104. Civil cause of action.**

(1) Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts.

(2) As an alternative to recovery under subsection (1), any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of \$200 and reasonable attorney's fees and court costs in the trial and appellate courts.

(3) In no event shall punitive damages be awarded under this section. The defendant shall be entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support. In awarding attorney's fees and costs under this section, the court shall not consider the ability of the opposing party to pay such fees and costs. Nothing under this section shall be interpreted as limiting any right to recover attorney's fees or costs provided under other provisions of law.

## **Georgia**

**§ 51-10-6. Owner's right of action for damage to or theft involving personal property**

(a) Any owner of personal property shall be authorized to bring a civil action to recover damages from any person who willfully damages the owner's personal property or who commits a theft as defined in Article 1 of Chapter 8 of Title 16 involving the owner's personal property. The owner of the personal property may recover as follows:

(1) In any such action, the property owner may recover compensatory damages which may include, in addition to the value of the personal property, any other loss sustained as a result of the willful damage or theft offense; and

(2) In any such action in which the value of the total claim, including exemplary damages, is less than \$5,000.00, the property owner may recover compensatory damages, as described in paragraph (1) of this subsection, and additionally may recover liquidated exemplary damages equal to \$300.00 or triple the amount of the entire loss sustained by the property owner as a result of the willful damage or theft offense, whichever is greater, and the cost of maintaining the civil action if all of the following apply:

(A) The property owner, at least 30 days prior to the filing of the action, provided written notice of a demand by personal delivery or certified mail or statutory overnight delivery, return receipt requested, for payment of the value of that personal property, the amount of any other loss sustained as a result of the willful damage or theft offense, and the liquidated exemplary damages set out in this paragraph upon the person who willfully damaged the property or who committed the theft offense;

(B) Either the person who willfully damaged the personal property or who committed the theft offense did not make payment to the property owner of the amount specified in the demand within 30 days after the date of receipt of the written demand or did not enter into an agreement with the property owner during that 30 day period for such payment, or the person who willfully damaged the personal property or who committed the theft offense entered into an agreement with the property owner during that 30 day period for such payment but the person did not make such payment in accordance with the terms of the agreement; and

(C) The property owner did not file a civil complaint against the person who willfully damaged the personal property or who committed the theft offense prior to the expiration of 30 days after the date of service of the written demand upon the person, or, if the person had entered into an agreement with the property owner during that 30 day period for payment, prior to the day on which the person failed to make payment in accordance with the terms of the agreement, whichever is applicable.

(b) The person or persons against whom the property owner brings a civil action pursuant to this Code section shall be entitled to recover reasonable attorney's fees and court costs upon a finding that the claimant raised a claim which was without reasonable, factual, or legal support.

(c) For purposes of paragraph (2) of subsection (a) of this Code section, written notice of demand for payment shall be substantially as follows:

"Upon reasonable cause, notice is given of (my) (our) demand for payment of damages in the amount of (state amount claimed: total should be \$300.00 or triple the amount of the entire loss sustained by the property owner as a result of the willful damage or theft offense, whichever is greater) arising out of your (willful damage, theft, or unlawful conversion) of the following personal property owned by (the undersigned or other owner) :

(List affected property)

Pursuant to Code Section 51-10-6 of the Official Code of Georgia Annotated, you are further notified that if the above-stated amount is not paid, or a written agreement as to its payment is not reached, within 30 days of the date you receive this letter, (I) (we) (other owner) intend to bring an action against you for such amount, plus attorney's fees, plus court costs, and such other relief as the law provides.

- (d) If a property owner whose personal property was willfully damaged or was the subject of a theft offense provides written notice of demand for payment upon a person who willfully damaged the personal property or who committed the theft offense, and the person makes payment in accordance with the demand within 30 days after the date of service of the written demand upon him or the person enters into an agreement with the property owner during that 30 day period for such payment and makes payment in accordance with the agreement, the property owner shall not file a civil complaint against the person in relation to the willful property damage or theft offense.
- (e) In a civil action to recover damages for willful damage to personal property or for a theft offense, the trier of fact may determine that an owner's property was willfully damaged or that a theft offense involving the owner's personal property has been committed, whether or not any person has pleaded guilty to or has been convicted of any criminal offense or has been adjudicated delinquent in relation to any act involving the owner's personal property.
- (f) As used in this Code section, the term "value" means the retail value of any personal property that is offered for sale by a mercantile establishment or the replacement value of any other personal property.
- (g) If a civil action is filed pursuant to Article 4 of Chapter 12 of Title 44 to recover personal property or damages resulting from willful damage to or theft of such personal property, no civil action authorized by this Code section shall be permitted.
- (h) The measure of damages provided for in this Code section shall not be applicable in cases involving the unauthorized cutting or cutting and carrying away of timber from the property of another. In such cases, damages shall be awarded in accordance with Code Section 51-12-50.

## **Hawaii**

### **[§ 663A-2.] Damages and penalties.**

- (a) Any person who takes possession of any merchandise displayed or offered for sale by any mercantile establishment without the consent of the owner and with the intention of converting such merchandise to the individual's own use without having paid the purchase price thereof, who alters the price indicia of such merchandise, or who takes any other action that constitutes the offense of shoplifting, shall be civilly liable to the owner of the mercantile establishment for either:
  - (1) Actual damages and a civil penalty of \$75, if a written demand is made pursuant to subsection (e), for the actual damages and this civil penalty; or
  - (2) Actual damages, a civil penalty of \$75, and an additional civil penalty of not less than \$50 nor more than \$500, to recover the costs and expenses of bringing a civil suit, as determined by the court.
- (b) A conviction for theft under section 708-830 to 708-833 is not a condition precedent to the maintenance of a civil action under this section.
- (c) A civil liability under this section is not limited by another law that limits liability of parents or minor children.
- (d) An action for recovery of damages and the assessment of the civil penalties under this section may be brought in any court of competent jurisdiction, including the small claims division of a district court.
- (e) The fact that an owner of a mercantile establishment may bring an action against an individual for damages as provided in this section shall not limit the right of the owner of a mercantile establishment to demand, in writing, prior to the commencement of any legal action, that a person who is liable for damages under this section remit said damages and the amount of civil penalty allowed in section 663A-2.
- (f) Judgments, but not claims, arising under this section may be assigned.

## **Idaho**

### **§ 48-701. Liability for removing or concealing merchandise -- Retail theft**

Any person who knowingly removes merchandise from a merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$ 100) nor more than two hundred fifty dollars (\$ 250), costs of suit and reasonable attorneys' fees.

### **§ 48-702. Liability for acts of minors**

The parent having legal custody, of a minor who knowingly removes merchandise from a merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$ 100) nor more than two hundred fifty dollars (\$ 250), costs of suit and reasonable attorney's fees. Recovery under this section is not limited by any other provision of law which limits the liability of a parent for the tortious conduct of a minor. The liability of parents and of the minor under this chapter is joint and several.

A parent not having legal custody of a minor shall not be liable for the conduct of the minor proscribed by this act.

## Illinois

### 720 ILCS 5/16-27 Civil liability

(a) A person who commits the offense of retail theft as defined in subdivision (a)(1), (a)(2), (a)(3), or (a)(8) of Section 16-25 [720 ILCS 5/16-25] shall be civilly liable to the merchant of the merchandise in an amount consisting of:

- (i) actual damages equal to the full retail value of the merchandise; plus
- (ii) an amount not less than \$100 nor more than \$1,000; plus
- (iii) attorney's fees and court costs.

(b) If a minor commits the offense of retail theft, the parents or guardian of the minor shall be civilly liable as provided in this Section; however, a guardian appointed pursuant to the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] shall not be liable under this Section. Total recovery under this Section shall not exceed the maximum recovery permitted under Section 5 of the Parental Responsibility Law [740 ILCS 115/5]. For the purposes of this Section, "minor" means a person who is less than 19 years of age, is unemancipated, and resides with his or her parent or parents or legal guardian.

(c) A conviction or a plea of guilty to the offense of retail theft is not a prerequisite to the bringing of a civil suit under this Section.

(d) Judgments arising under this Section may be assigned.

Bill introduced to Legislature to incorporate the following changes:

### **ILLINOIS 99TH GENERAL ASSEMBLY > HOUSE BILL 2496**

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

The Criminal Code of 2012 is amended by changing Section 16-27 as follows:

(720 ILCS 5/16-27)

Sec. 16-27. Civil liability.

(a) A person who commits the offense of retail theft as defined in subdivision (a)(1), (a)(2), (a)(3), or (a)(8) of Section 16-25 shall be civilly liable to the merchant of the merchandise in an amount consisting of:

- (i) actual damages equal to the full retail value of the merchandise; plus
- (ii) an amount EQUAL TO THE LESSER OF \$ 500 OR 3 TIMES THE FULL RETAIL VALUE OF THE MERCHANDISE ~~not less than \$ 100 nor more than \$ 1,000~~ ; plus
- (iii) attorney's fees and court costs.

(b) If a minor commits the offense of retail theft, the parents or guardian of the minor shall be civilly liable as provided in this Section; however, a guardian appointed pursuant to the Juvenile Court Act of 1987 shall not be liable under this Section. Total recovery under this Section shall not exceed the maximum recovery permitted under Section 5 of the Parental Responsibility Law. For the purposes of this Section, "minor" means a person who is less than 19 years of age, is unemancipated, and resides with his or her parent or parents or legal guardian.

(c) A conviction or a plea of guilty to the offense of retail theft is not a prerequisite to the bringing of a civil suit under this Section.

(d) Judgments arising under this Section may be assigned.

(E) A MERCHANT MAY RECOVER CIVIL DAMAGES FOR RETAIL THEFT BY BRINGING SUIT IN A CIRCUIT COURT OR BY EXECUTING A SETTLEMENT AGREEMENT IN THE FORM SET OUT IN SUBSECTION (F) OF THIS SECTION.

(F) A MERCHANT AND A PERSON ACCUSED OF RETAIL THEFT BY THE MERCHANT MAY AGREE TO EXECUTE A CIVIL SETTLEMENT AGREEMENT FOR CIVIL DAMAGES IN AN AMOUNT EQUAL TO THE LESSER OF \$ 500 OR 3 TIMES THE FULL RETAIL VALUE OF THE MERCHANDISE, PLUS THE RETURN OF THE MERCHANDISE OR THE REPLACEMENT VALUE OF THE MERCHANDISE WITHIN 60 DAYS OF THE DATE THE AGREEMENT IS SIGNED. THE FORM OF THE SETTLEMENT AGREEMENT SHALL BE AS FOLLOWS:

## SETTLEMENT OF CLAIM FOR TAKING MERCHANDISE WITHOUT PAYMENT

THE UNDERSIGNED, ...

(PARTY #1), HAVING FAILED TO PAY FOR CERTAIN MERCHANDISE, MORE SPECIFICALLY DESCRIBED AS FOLLOWS ....., HEREBY AGREES TO PAY, WITHIN 60 DAYS OF THE DATE THIS AGREEMENT IS SIGNED, CIVIL DAMAGES OF ...

(AN AMOUNT EQUAL TO THE LESSER OF \$ 500 OR 3 TIMES THE FULL RETAIL VALUE OF THE MERCHANDISE), PLUS THE MERCHANDISE OR THE REPLACEMENT VALUE OF THE MERCHANDISE. THE PARTIES AGREE THAT THIS PAYMENT SHALL CONSTITUTE FULL AND COMPLETE PAYMENT OF DAMAGES TO THE FOLLOWING MERCHANT ... THE FOLLOWING MERCHANT ... AGREES TO WAIVE ANY AND ALL CLAIMS IT MAY HAVE FOR CIVIL DAMAGES.

NOTHING IN THIS AGREEMENT SHALL CONSTITUTE AN ADMISSION OF GUILT FOR PURPOSES OF CRIMINAL LAW. IF THIS AGREEMENT IS SIGNED AND PAYMENT IS MADE IN FULL WITHIN 60 DAYS, NO POLICE REPORT OR CRIMINAL COMPLAINT WILL BE FILED BY THE MERCHANT RELATIVE TO THIS INCIDENT. HOWEVER, NOTHING IN THIS AGREEMENT CAN OR WILL BAR THE STATE OF ILLINOIS FROM INSTITUTING THE CRIMINAL PROSECUTIONS AS IT DEEMS NECESSARY.

... PARTY #1

... PARTY #2 FOR THE FOLLOWING MERCHANT:

## Indiana

### **34-24-3-1. Damages in civil action.**

If a person has an unpaid claim on a liability that is covered by IC 24-4.6-5 or suffers a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3, IC 35-42-3-4, or IC 35-45-9, the person may bring a civil action against the person who caused the loss for the following:

- (1) An amount not to exceed three (3) times:
  - (A) the actual damages of the person suffering the loss, in the case of a liability that is not covered by IC 24-4.6-5; or
  - (B) the total pump price of the motor fuel received, in the case of a liability that is covered by IC 24-4.6-5.
- (2) The costs of the action.
- (3) A reasonable attorney's fee.
- (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to:
  - (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
  - (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter.
- (5) A reasonable amount to compensate the person suffering loss for time used to:
  - (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
  - (B) travel to and from activities described in clause (A).
- (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to:
  - (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
  - (B) travel to and from activities described in clause (A).
- (7) All other reasonable costs of collection.

### **34-24-3-2. Irrebuttable presumption as to retailer's damages — Indemnification and insurance prohibited.**

(a) For purposes of determining the amount of damages recoverable under section 1(1) [IC 34-24-3-1(1)] of this chapter, there is an irrebuttable presumption that a retailer who brings a civil action under this chapter (or IC 34-4-30 before its repeal) as the result of a violation of IC 35-43-4-2 (theft) or IC 35-43-4-3 (conversion) suffers a pecuniary loss in the amount of:

- (1) one hundred dollars (\$100) regardless of whether:

- (A) the property is returned to the retailer; or
  - (B) the actual retail value of the property is less than one hundred dollars (\$100); or
  - (2) the retailer's actual damages;
- whichever is greater.

(b) An individual found liable in a civil action under this chapter (or IC 34-4-30 before its repeal) for violating IC 35-43-4-2 or IC 35-43-4-3 may not be indemnified or insured for any penalties, damages, or settlement arising from the violation.

**34-24-3-3. Defendant subject to criminal prosecution — Punitive damages and treble damages not recoverable.**

It is not a defense to an action for punitive damages that the defendant is subject to criminal prosecution for the act or omission that gave rise to the civil action. However, a person may not recover both:

- (1) punitive damages; and
- (2) the amounts provided for under section 1 or 1.5 [IC 34-24-3-1 or IC 34-24-3-1.5] of this chapter.

## Iowa

### 645.3 Liability.

1. A person who knowingly and without claim of right wrongfully appropriates, takes possession of, or alters the price indicia of merchandise of a mercantile establishment without the consent of the owner and with the intent to convert the merchandise to the person's own use without having paid the full purchase price for it, is liable for:
  - a. The return of the merchandise or the purchase price of the merchandise, provided that the merchandise is not evidence in a criminal proceeding under chapter 714.
  - b. Actual damages for any decrease in value of the merchandise returned.
  - c. The greater of fifty dollars or actual costs, not to exceed two hundred dollars, incurred by the owner in recovering the merchandise or damages pursuant to this chapter.
2. Damages awarded under this section shall be reduced by any amount received by the owner pursuant to court ordered restitution under chapter 232A or 910.
3. The parent or parents of an unemancipated minor child under the age of eighteen years are liable for any judgment awarded against the child pursuant to subsection 1 in accordance with, and subject to the limits established in, section 613.16.

### 613.16 Parental responsibility for actions of children.

1. The parent or parents of an unemancipated minor child under the age of eighteen years shall be liable for actual damages to person or property caused by unlawful acts of such child. However, a parent who is not entitled to legal custody of the minor child at the time of the unlawful act shall not be liable for such damages.
2. The legal obligation of the parent or parents of an unemancipated minor child under the age of eighteen years to pay damages shall be limited as follows:
  - a. Not more than two thousand dollars for any one act.
  - b. Not more than five thousand dollars, payable to the same claimant, for two or more acts.
3. The word "person" for the purpose of this section shall include firm, association, partnership or corporation.
4. When an action is brought on parental responsibility for acts of their children, the parents shall be named as defendants therein and, in addition, the minor child shall be named as a defendant. The filing of an answer by the parents shall remove any requirement that a guardian ad litem be required.

## Kansas

### 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.

## **Kentucky**

### **411.095. Liability for stealing or damaging goods of retailer or wholesaler.**

(1) An adult or emancipated minor who damages, destroys, or takes possession of any goods, wares, or merchandise, stored, displayed, or offered for sale by any wholesale or retail store or other mercantile establishment, or who alters the price indicia of the merchandise, in violation of the provisions of KRS Chapters 512 and 514, without having paid the purchase price thereof, shall be civilly liable to the owner for actual damages, if any, and for a penalty to the owner in the amount of the retail value of the merchandise not to exceed five hundred dollars (\$500), plus an additional penalty to the owner of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).

(2) The custodial parents or legal guardian having custody of an unemancipated minor who damages, destroys, or takes possession of any goods, wares, or merchandise, stored, displayed, or offered for sale by any wholesale or retail store or other mercantile establishment, or who alters the price indicia of the merchandise, which would be a public offense, without having paid the purchase price thereof, shall be civilly liable to the owner for actual damages, if any, and for a penalty to the owner in the amount of the retail value of the merchandise not to exceed five hundred dollars (\$500), plus an additional penalty to the owner of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250). For purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parents assigned responsibility for the minor child pursuant to a court order or action of the Cabinet for Health and Family Services, or any agency thereunder.

(3) For the purposes of this section, "owner" shall include any agent or employee of the owner.

(4) A conviction of an offense under KRS Chapters 512 or 514 is not a condition precedent to the maintenance of a civil action under this section.

- (5) Civil liability under this section shall not be limited by any other law that limits liability of parents of minor children.
- (6) An action for recovery of damages, or penalty, or both, and costs under this section may be brought in any court of competent jurisdiction, including the small claims division of District Court, if the total amount sought does not exceed the jurisdictional limit of the respective court.
- (7) The fact that an owner has a right to bring an action against any individual as provided in this section shall not limit the right of the owner to demand, in writing, that a person who is liable under this section remit the amount of the claim prior to the commencement of any legal action.
- (8) Judgments, but not claims, arising under this section may be assigned.
- (9) In addition to any civil damages or penalties, or both, which may be recovered under this section, a judgment for recovery shall also include court costs.
- (10) Civil claims under this section shall apply to those claims which arise after July 13, 1990.

## Louisiana

### § 9:2799.1. Civil liability for theft of goods from merchant

- A. Any person who unlawfully takes merchandise from a merchant's premises shall be liable to the merchant for the retail value of the merchandise taken, if not recovered in merchantable condition, plus damages of not less than fifty nor more than five hundred dollars.
- B. The provisions of this Section shall not be construed to prohibit or limit any other cause of action which a merchant may have against a person who unlawfully takes merchandise from the merchant's premises.
- C. Any damages under this Section shall be reduced by the amount recovered from the offender as restitution to the merchant as a condition of sentence.

### Art. 225. Parental liability for child's offenses and quasi-offenses [Effective January 1, 2016]

Parents are responsible for damage occasioned by their child as provided by law.  
[previously liable under La. C.C. Art. 237 (now repealed)]

## Maine

14 Maine Revised Statutes § 8302

### § 8302. Civil recovery

1. **LIABILITY.** Any person who unlawfully takes or attempts to take merchandise from a merchant is liable to the merchant in accordance with provisions of this chapter.
2. **NO LIMITATION.** The provisions of this chapter may not be construed to prohibit or limit any other cause of action that a merchant may have against a person who unlawfully takes merchandise from the merchant.
3. **CIVIL RECOVERY.** Any person who unlawfully takes or attempts to take merchandise from a merchant is civilly liable to the merchant in an amount consisting of:
  - A. Damages equal to the retail price of the merchandise if the item is not returned in a merchantable condition; and
  - B. A civil penalty equal to 3 times the retail price of the merchandise, but not less than \$ 50 or more than \$ 500.
4. **WRITTEN DEMAND.** The fact that an action may be brought against an individual as provided in this chapter does not limit the right of a merchant to make a written demand that a person who is liable for damages and penalties under this chapter remit the damages and penalties prior to the commencement of any legal action.
  - A. If a person to whom demand is made complies with the demand, that person incurs no further civil liability for that specific act of retail theft.
  - B. Any demand under this section must be accompanied by a copy of this chapter.
5. **CRIMINAL PROSECUTION.** A criminal prosecution under Title 17-A, chapter 15 is not a prerequisite to an action under this chapter and such a criminal prosecution does not bar civil action. An action under this chapter does not bar a criminal prosecution under Title 17-A, chapter 15.
6. **FAILURE TO PROSECUTE.** If a merchant files suit to recover damages and penalties pursuant to this chapter, and the merchant fails to appear at a hearing in such proceedings without excuse from the court, the court shall dismiss the suit without prejudice and award costs to the defendant.
7. **FRAUDULENT PROSECUTION.** Any person who knowingly uses provisions of this chapter to demand or extract money from a person who is not legally obligated to pay a penalty may be punished by a fine of not more than \$ 1,000 or by imprisonment for not more than one year or by both.



## Maryland

Md. Courts and Judicial Proceedings Code Ann. § 3-1302 et seq.

### § 3-1302. Civil liabilities

A responsible person is civilly liable to the merchant:

- (1) To restore the merchandise to the merchant or, if the merchandise is not recoverable, has been damaged, or otherwise has lost all or part of its value, to pay the merchant an amount equal to the merchant's stated sales price for the merchandise;
- (2) To pay the merchant for any other actual damages sustained by the merchant, not including the loss of time or wages incurred in connection with the apprehension or prosecution of the shoplifter or employee; and
- (3) Subject to the merchant's compliance with the procedures contained in § 3-1303 of this subtitle, to pay the merchant a civil penalty equal to twice the merchant's stated sales price for the merchandise, but not less than \$ 50 nor more than \$ 1,000.

### § 3-1303. Required procedures by merchant

(a) In general. -- If a merchant elects to seek the civil penalty available under § 3-1302 (3) of this subtitle, the merchant:

- (1) Shall comply with the procedures contained in this section;
- (2) May not orally request or accept any payment at the time of apprehension; and
- (3) May not accept any payment in cash without issuing a receipt for the payment.

(b) Initial demand letter. --

(1) The merchant shall cause an initial demand letter to be:

- (i) Hand delivered personally to the responsible person; or
- (ii) Mailed to the responsible person at that person's last known address.

(2) The initial demand letter shall:

- (i) Identify the act of shoplifting or employee theft alleged to have been committed;
- (ii) Specify the amount of damages sought under § 3-1302(1) and (2) of this subtitle;
- (iii) Specify the amount of the civil penalty sought under § 3-1302(3) of this subtitle and explain the method of calculating that amount;
- (iv) Request payment of the damages and civil penalty by cash, money order, certified check, or cashier's check;
- (v) Contain a conspicuous notice advising the responsible person that payment of the damages and civil penalty does not preclude the possibility of criminal prosecution, but that the payment would not be admissible in any criminal proceeding as an admission or evidence of guilt; and
- (vi) Specify the date by which the responsible person shall make the required payment to avoid civil action, which date shall be at least 15 days after the date of hand delivery or from the postmark date, as the case may be, of the initial demand letter.

(c) Second demand letter. --

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

(2) The second demand letter shall:

- (i) Contain the same information, request for payment, and notice that is required by subsection (b)(2)(i) through (v) of this section for an initial demand letter;
- (ii) Specify the date by which the responsible person shall make the required payment to avoid civil action, which date shall be at least 10 days from the postmark date of the second demand letter; and
- (iii) Advise the responsible person that, if the required payment is not made in full on or before the date specified in the second demand letter, the responsible person will be subject to immediate institution of a civil suit for damages, penalties, court costs, and reasonable attorney's fees.

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

### § 3-1304. Immunity

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

### **§ 3-1305. Civil action by merchant**

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

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

### **§ 3-1306. Criminal prosecution**

(a) No prerequisite. -- Criminal prosecution for an offense of theft under § 7-104 of the Criminal Law Article is not a prerequisite to the maintenance of a civil action under this subtitle.

(b) Criminal prosecution not precluded; payment not admissible evidence. -- The recovery of damages and penalties under this subtitle does not preclude criminal prosecution. However, the payment of damages and penalties under this subtitle is not admissible in any criminal proceeding as an admission of guilt or as evidence of guilt.

### **§ 3-1307. Applicability**

The procedures required by § 3-1303 of this subtitle:

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

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

## **Massachusetts**

Massachusetts Ann. Laws ch. 231, § 85R 1/2 and/or 85G

### **§ 85R½. Tort Liability for Shoplifting; Penalty. [Effective April 6, 2015.]**

Whoever: causes damage to the property of a person as a result of a larceny or attempted larceny of said property as set forth in section 30A of chapter 266; commits or attempts to commit a larceny of goods for sale on the premises of a merchant; or commits or attempts to commit a larceny of the personal property of employees or customers or others present on such premises shall be liable in tort to the merchant for damages. The damages shall be: not more than \$50 in addition to any actual damages incurred if the value of the property is less than \$50; not more than \$250 in addition to any actual damage incurred if the value of the property is more than \$50 but less than \$250; and not more than \$500 in addition to any actual damages incurred if the value of the property is more than \$250. An action for recovery may be commenced under sections 21 to 25, inclusive, of chapter 218.

Any correspondence by a merchant, its agents or attorneys that asserts a claim against an individual arising under this section shall identify in detail all of the pertinent information on which the merchant bases its claim. Any person who solicits payment that exceeds the limitations provided by this section shall be subject to a fine of not more than \$500.

### **§ 85G. Civil Liability of Parents for Wilful Acts of Minor Children.**

Parents of an unemancipated child under the age of eighteen and over the age of seven years shall be liable in a civil action for any willful act committed by said child which results in injury or death to another person or damage to the property of another, which shall include any damages resulting from a larceny or attempted larceny of property as set forth in section thirty A of chapter two hundred and sixty-six, damage to cemetery property or damage to any state, county or municipal property or damage as set forth in sections one hundred and twenty-six A and one hundred and twenty-six B of chapter two hundred and sixty-six. This section shall not apply to a parent who, as a result of a decree of any court of competent jurisdiction, does not have custody of such child at the time of the commission of the tort. Recovery under this section shall be limited to the amount of proved loss or damage but in no event shall it exceed five thousand dollars.

## **Michigan**

**§ 600.2953. Retail fraud; liability; civil damages; demand for payment; text; noncompliance; effect of payment; jurisdiction; civil action against parent; formal police report; violation by merchant precluding recovery.**

Sec. 2953. (1) In addition to applicable penal sanctions, a person who commits an act for which he or she could be charged with retail fraud in the first, second, or third degree under sections 356c and 356d of the Michigan penal code, 1931 PA 328, MCL 750.356c and 750.356d, is liable to the merchant who is the victim of the act for the full retail price of unrecovered property or recovered property that is not in salable condition, and civil damages of 10 times the retail price of the property, but not less than \$50.00 and not more than \$200.00.

(2) The merchant who is the victim of retail fraud in the first, second, or third degree, or an agent of the merchant, may make a written demand for payment of the amount for which the person who committed the act is liable under subsection (1). Except for a sole proprietorship, a member of management, other than the initial detaining person, shall evaluate the validity of the accusation that the person committed the act and shall approve the accusation in writing before a written demand for payment is issued. The demand for payment may be delivered to the person from whom payment is demanded by first-class mail. The text of the written demand shall be as follows:

“We have cause to believe that on (date) you, or your minor child (child’s name) , committed retail fraud in the first, second, or third degree by (description of action and property involved) in our store or in its immediate vicinity.

State law authorizes us to demand in writing that you do all of the following, as applicable:

Return the property in salable condition or pay to us \$....., which represents the full retail price or the remaining balance of the full retail price of the property.

Pay to us \$....., which represents the full retail price of the recovered property that is not in salable condition.

Pay to us civil damages in an amount equal to 10 times the retail price of the property involved, but not less than \$50.00 or more than \$200.00, equaling a total amount of \$.....

This notice is a formal demand for return of the property involved, if applicable, and the payment of the amounts indicated above, equaling a total amount of \$..... If you return any unrecovered property and pay the amounts indicated above to us within 30 days after the date this notice was mailed, we will not take any further civil action against you.

You are not required to respond to this demand if you believe that you or your minor child are not guilty of committing retail fraud or if you choose not to respond. If you fail to comply with this demand, we will be authorized by state law to bring a civil action against you to determine your legal responsibility for the return of any unrecovered property and the payment of the amounts indicated above plus the cost of the action, including reasonable attorney fees.

These civil proceedings do not prevent criminal prosecution for the alleged act of retail fraud.”

(3) If the person to whom a written demand is made under subsection (2) complies with the written demand within 30 days after the date the written demand is mailed, that person shall incur no further civil liability to the merchant from the act of retail fraud.

(4) A person who commits an act described in subsection (1) and who fails to comply with a written demand under subsection (2) is liable to the merchant for the full retail price of the property, unless the property was recovered in salable condition, plus civil damages of 10 times the retail price of the property but not less than \$50.00 or more than \$200.00, and costs of the action, including reasonable attorney fees.

(5) If a civil action is filed pursuant to this section and before the trial of the action is commenced the person to whom a written demand was made under subsection (2) pays the merchant in cash the amount demanded, subsection (4) does not apply.

(6) An action under this section may be brought in the small claims division of the district court or in any other court of competent jurisdiction. If the amount demanded exceeds the jurisdiction of the small claims division, the action may still be brought in the small claims division, but the amount recovered shall not exceed the jurisdiction of the small claims division.

(7) A merchant may recover damages in an amount allowable under this section in a civil action in a court of competent jurisdiction against the parent or parents of an unemancipated minor who lives with his or her parent or parents and who commits an act described in subsection (1).

(8) A merchant may recover the amount for which a person is civilly liable under this section only if a formal police report is filed with a local law enforcement agency that has jurisdiction over the location where the violation took place, which report sets forth facts alleging that the person has committed retail fraud in the first, second, or third degree or violated a local ordinance substantially corresponding to section 218, 356, 356c, or 356d of the Michigan penal code, 1931 PA 328, MCL 750.218, 750.356, 750.356c, and 750.356d, regardless of the outcome of any criminal action.

(9) Notwithstanding any other provision of this section, a merchant shall not recover civil damages for an act of retail fraud in the first, second, or third degree with regard to a particular item of property if the merchant violated

section 3 of 1976 PA 449, MCL 445.353, with regard to that item of property and the violation was not caused by the person who committed the act of retail fraud.

## **Minnesota**

### **604.14 CIVIL LIABILITY FOR THEFT**

Subdivision 1. Liability for theft of property. — A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either \$ 50 or up to 100 percent of its value when stolen, whichever is greater. If the property is merchandise stolen from a retail store, its value is the retail price of the merchandise in the store when the theft occurred.

Subd. 2. Notice. — In order to recover under subdivision 1 for the theft of a shopping cart, a store must have posted at the time of the theft a conspicuous notice describing the liability under subdivision 1.

Subd. 3. Liability of parent or guardian. — Section 540.18 applies to this section, except that recovery is not limited to special damages.

Subd. 4. Criminal action. — The filing of a criminal complaint, conviction, or guilty plea is not a prerequisite to liability under this section. Payment or nonpayment may not be used as evidence in a criminal action.

Subd. 5. Recovery of property. — The recovery of stolen property by a person does not affect liability under this section, other than liability for the value of the property.

Subd. 6. Right to demand payment. — A person may make a written demand for payment for the liability imposed by this section before beginning an action, including a copy of this section and a description of the liability contained in this section.

### **540.18 DAMAGE BY MINOR; RESPONSIBILITY OF PARENT, GUARDIAN, AND MINOR**

Subdivision 1. Liability rule. — The parent or guardian of a minor who is under the age of 18 and who is living with the parent or guardian and who willfully or maliciously causes injury to any person or damage to any property is jointly and severally liable with such minor for such injury or damage to an amount not exceeding \$ 1,000, if such minor would have been liable for such injury or damage if the minor had been an adult. Nothing in this subdivision shall be construed to relieve such minor from personal liability for such injury or damage. The liability provided in this subdivision is in addition to and not in lieu of any other liability which may exist at law. Recovery under this section shall be limited to special damages.

Subd. 2. Not applicable to certain persons. — This section shall not apply to persons having custody or charge of any minor under the authority of the Human Services or Corrections Department of the state.

## **Mississippi**

### **§ 97-23-96. Civil remedy for shoplifting violations; written demand prior to commencing civil proceedings; recovery from parents or legal guardians of minors; costs**

(1) Any person who proves by clear and convincing evidence that he has been injured in any fashion by reason of any violation of the provisions of Section 97-23-93, Mississippi Code of 1972, has a cause of action for threefold the actual damages sustained or damages in the amount of Two Hundred Dollars (\$ 200.00), whichever is greater, reasonable attorney's fees and court costs in the trial and in any proceedings in appellate courts. The recovery of stolen goods regardless of condition shall not affect the right to the minimum recovery provided herein.

(2) Before filing an action for damages under this section, the person claiming injury must make a written demand for Two Hundred Dollars (\$ 200.00) or threefold the actual damages sustained, whichever is greater, of the person or accused liable for damages under this section. If the accused to whom a written demand is made complies with such demand within thirty (30) days after receipt of the demand, he shall be given a written release from further civil liability for the specific act of shoplifting by the victim making the written demand.

(3) Any victim who has a cause of action under this section may recover the damages allowed under this section from the parents or legal guardian of any unemancipated minor who lives with his parents or legal guardian and who is liable for damages under this section if it is proven that the parents or legal guardian had knowledge of the minor's intent to violate the provisions of Section 97-23-93 or aided and abetted the minor in such violations. Foster parents shall not be liable for the acts of children placed with them.

Nothing in this section shall in any way be construed as to abrogate, compromise or violate any minor's right to confidentiality under any other provision of the Mississippi Code of 1972 or otherwise.

(4) In no event shall punitive damages be awarded under this section.

(5) In awarding damages, attorney's fees, expenses or costs under this section, the court shall not consider the ability of the opposing party to pay such fees and costs. Nothing under this section shall be interpreted as limiting any right to recover damages, attorney's fees, expenses or costs provided under other provisions of law.

## **Missouri**

### **§ 570.087. Stealing, civil liability—parent or guardian civilly liable for minor’s stealing—conversion of shopping carts, penalty [Renumbered effective until Jan. 1, 2017]**

1. As used in this section, the following terms mean:

- (1) “Actual damages”, the full retail value of any merchandise which is taken or which has its price altered in a manner described in subsection 2 of this section, plus any proven incidental costs to the owner of the merchandise not to exceed one hundred dollars;
- (2) “Mercantile establishment”, any place where merchandise is displayed, held or offered for sale either at retail or at wholesale;
- (3) “Merchandise”, all things movable and capable of manual delivery and offered for sale either at retail or wholesale;
- (4) “Unemancipated minor”, an individual under the age of eighteen years whose parents or guardian have not surrendered the right to the care, custody and earnings of such individual, and are under a duty to support or maintain such individual.

2. An adult or a minor who takes possession of any merchandise from any mercantile establishment without the consent of the owner, without paying the purchase price and with the intention of converting such merchandise to his own use, or the use of another, or who purchases merchandise after altering the price indicia of such merchandise, shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of not less than one hundred dollars nor more than two hundred fifty dollars and all court costs and reasonable attorney fees.

3. The parents or guardian having physical custody of an unemancipated minor, who takes possession of any merchandise from any mercantile establishment without the consent of the owner, without paying the purchase price and with the intention of converting such merchandise to his own use, or the use of another, or who purchases merchandise after altering the price indicia of such merchandise, shall be civilly liable to the owner for actual damages, provided that a parent or guardian shall not be liable if they have not had physical custody for a period in excess of one year.

4. Notwithstanding the provisions of subsections 2 and 3 of this section, any person who, without the consent of the owner, takes possession of a shopping cart from any mercantile establishment with the intent to convert such shopping cart to his own use or the use of another shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of one hundred dollars and all court costs and reasonable attorney fees.

5. A conviction under section 570.030 or 570.040 shall not be a condition precedent to maintaining a civil action pursuant to the provisions of this section.

6. No owner or agent or employee of the owner may attempt to gain an advantage in a civil action by threatening to initiate a criminal prosecution pertaining to the same incident.

## **Montana**

### **27-1-718 Civil penalty for shoplifting.**

(1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the taker’s own use without having paid the purchase price of the goods is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the greater of \$ 100 or the retail value of the goods, not to exceed \$ 1,000. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the minor’s own use without having paid the purchase price of the goods, the minor’s parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of \$ 100 or the retail value of the goods, not to exceed \$ 1,000. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of corrections or the department of public health and human services.

(3) Judgments and claims arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section.

(5) For purposes of this section, the term “emancipated minor” means a person under 18 years of age who is self-supporting from personal earnings or is married. A person who received more than 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor.

## Nebraska

### **§ 25-21,194. Shoplifting; civil action authorized; conditions; limitations.**

(1)

(a) Any person who commits the crime of theft by shoplifting as provided in section 28-511.01 or whose conduct is described by section 28-511.01 or (b) the parents of a minor who commits the crime of theft by shoplifting as provided in section 28-511.01 or whose conduct is described by section 28-511.01 shall be liable to the owner of the merchandise in a civil action for:

(i) Actual property damage or loss sustained as a direct result of the incident of shoplifting, which may include, but shall not be limited to, full retail value, cost of repair, or cost of replacement of the merchandise;

(ii) Costs of maintaining the action; and

(iii) Reasonable attorney’s fees if such owner has retained the services of an attorney in maintaining the action and the action is not in the Small Claims Court.

(2) A conviction under any statute or ordinance shall not be a condition precedent to maintaining an action under this section.

(3) Recovery under this section may be had in addition to, and shall not be limited by, any other provision of law which limits the liability of the parents for tortious conduct of a minor. The liability of the parents and the minor shall be joint and several.

(4) This section shall not prohibit or limit any other cause of action which the owner of merchandise may have against a person who unlawfully or wrongfully takes merchandise from the owner’s store or retail establishment.

(5) Judgments, but not claims, arising under this section may be assigned.

(6) The fact that an owner of merchandise may commence an action under this section shall not limit the right of such owner to demand, in writing, that any person who is liable for damages and costs under this section remit such damages and costs prior to the commencement of an action.

(7) This section shall only apply to causes of action which accrue after August 30, 1987.

(8) For purposes of this section, minor shall mean any individual under seventeen years of age.

(9) Notwithstanding any other provision of this section, no parent shall be liable to the owner of merchandise in a civil action unless such minor is living with such parent at the time the conduct described by section 28-511.01 is committed.

## Nevada

### **597.860. Shoplifting: Civil liability of adult who steals merchandise from or damages property on merchant's premises.**

1. An adult who steals merchandise from, or damages property on, a merchant's premises is civilly liable for the retail value of the merchandise or the fair market value of the other property, plus damages of not less than \$100 nor more than \$250, costs of suit and reasonable attorney's fees. An action may be brought even if there has been no criminal conviction for the theft or damage.

2. An action under this section may be brought as a small claim in a Justice Court if the total amount sought does not exceed the statutory limit for such a claim.

### **597.870. Shoplifting: Civil liability of parent or guardian of minor who steals merchandise from or damages property on merchant's premises.**

1. The parent or legal guardian, as the case may be, of a minor who steals merchandise from, or damages property on, a merchant's premises is civilly liable for:

(a) The retail value of the merchandise; and

(b) The fair market value of the damaged property,

plus damages of not less than \$100 nor more than \$250, costs of suit and reasonable attorney's fees. An action may be brought even if there has been no criminal conviction for the theft or damage. Recovery under this section may be had in addition to, and is not limited by, any other provision of law which limits the liability of a parent or legal guardian for the tortious conduct of a minor.

2. An action under this section may be brought as a small claim in a Justice Court if the total amount sought does not exceed the statutory limit for such a claim.

## New Hampshire

### **507:8-f. Civil Actions for Theft.**

When the conduct of a person would constitute willful concealment as provided in RSA 637:3-a, the person shall be liable to the merchant for damages as provided in RSA 544-C:1. An action for recovery of damages, pursuant to this section, may be brought in small claims court if the total damages do not exceed the jurisdictional limit of such court, or in any other appropriate court. The provisions of this section are in addition to other civil remedies and shall not limit the rights of merchants or other persons to elect to pursue other civil remedies.

### **544-C:1. Recovery of Civil Damages for Willful Concealment.**

I. For purposes of this chapter, “willful concealment” shall mean willful concealment as defined in RSA 637:3-a.

II. A person who willfully conceals shall be liable for civil damages to the merchant up to \$400 plus the merchandise or the value of the merchandise if it has been damaged or rendered unrecoverable.

III. A merchant may recover civil damages for willful concealment by bringing suit in a district court or by executing a settlement agreement in the form set out in paragraph IV of this section.

IV. A merchant and a person accused of willful concealment by such merchant may agree to execute a civil settlement agreement for up to \$400 in civil damages, plus the return of the merchandise or the replacement value of the merchandise within 60 days of the date the agreement is signed. The form of the settlement agreement shall be as follows:

#### Settlement of Claim for Taking Merchandise Without Payment

The undersigned, , having failed to pay for certain merchandise, more specifically described as follows , hereby agrees to pay, within 60 days of the date this agreement is signed, civil damages up to \$400, plus the merchandise or the replacement value of the merchandise. The parties agree that this payment shall constitute full and complete payment of damages to the following establishment . The following establishment agrees to waive any and all claims it may have for civil damages.

Nothing in this agreement shall constitute an admission of guilt for purposes of criminal law. If this agreement is signed and payment is made in full within 60 days, no police report or criminal complaint will be filed by the merchant relative to this incident. However, nothing in this agreement can or will bar the state of New Hampshire from instituting such criminal prosecutions as it deems necessary.

## New Jersey

### **§ 2A:61C-1. Shoplifting, retail thefts, civil action; provided**

a. A person who commits the offense of shoplifting as defined in N.J.S. 2C:20-11 or a person who commits the offense of theft as defined in Chapter 20 of Title 2C of the New Jersey Statutes by stealing food or drink from an eating establishment shall be liable for any criminal penalties imposed by law and shall be liable to the merchant in a civil action in an amount equal to the following:

(1) The value of the merchandise as damages, not to exceed \$500, if the merchandise cannot be restored to the merchant in its original condition;

(2) Additional damages, if any, arising from the incident, not to include any loss of time or wages incurred by the merchant in connection with the apprehension of the defendant; and

(3) A civil penalty payable to the merchant in an amount of up to \$150.

b. A parent, guardian or other person having legal custody of a minor who commits the offense of shoplifting or the offense of theft of food or drink from an eating establishment shall be liable to the merchant for the damages specified in subsection a. of this section. This subsection shall not apply to a parent whose parental custody and control of such minor has been removed by court order, decree, judgment, military service, or marriage of such infant, or to a resource family parent of such minor.

c. If a merchant institutes a civil action pursuant to the provisions of this section, the prevailing party in that action shall be entitled to an award of reasonable attorney’s fees and reasonable court costs.

d. Limitations on civil action:

(1) Before a civil action may be commenced, the merchant shall send a notice to the defendant’s last known address giving the defendant 20 days to respond. It is not a condition precedent to maintaining an action under this act that the defendant has been convicted of shoplifting or theft.

(2) No civil action under this act may be maintained if the defendant has paid the merchant a penalty equal to the retail value of the merchandise where the merchandise was not recovered in its original condition, plus a sum of up to \$150.

(3) The provisions of this act do not apply in any case where the value of the merchandise exceeds \$500.

e. If the person to whom a written demand is made complies with such demand within 20 days following the receipt of the demand, that person shall be given a written release from further civil liability with respect to the specific act of shoplifting or theft.

## **New Mexico**

### **30-16-21. Civil liability of adult shoplifter; penalty.**

Any person who has reached the age of majority and who has been convicted of shoplifting under Section 30-16-20 NMSA 1978, may be civilly liable for the retail value of the merchandise, punitive damages of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), costs of the suit and reasonable attorney's fees. However, the merchant shall not be entitled to recover damages for the retail value of any recovered undamaged merchandise.

## **New York**

Larceny in Mercantile Est. Stat., NY General Obligations Law Section 11- 105

### **§ 11-105. Larceny in mercantile establishments**

1. When used in this section, the term "mercantile establishment" shall mean a place or vehicle where goods, wares or merchandise are offered for sale or a place or vehicle from which deliveries of goods, wares or merchandise are made.

2. When used in this section, the term "larceny" is an act heretofore defined or known as common law larceny by trespassory taking as defined in paragraph (a) of subdivision two of section 155.05 of the penal law committed against the property of a mercantile establishment.

3. When used in this section, the term "emancipated minor" shall mean a person who was over the age of sixteen at the time of the alleged larceny and who was no longer a dependent of or in the custody of a parent or legal guardian.

4. In any proceeding brought under this section the burden of proof shall be by a preponderance of the evidence.

5. An adult or emancipated minor who commits larceny against the property of a mercantile establishment shall be civilly liable to the operator of such establishment in an amount consisting of:

(a) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus

(b) a penalty not to exceed the greater of five times the retail price of the merchandise or seventy-five dollars; provided, however, that in no event shall such penalty exceed five hundred dollars.

6. Parents or legal guardians of an unemancipated minor shall be civilly liable for said minor who commits larceny against the property of a mercantile establishment to the operator of such establishment in an amount consisting of:

(a) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus

(b) a penalty not to exceed the greater of five times the retail price of the merchandise or seventy-five dollars; provided, however, that in no event shall such penalty exceed five hundred dollars.

7. A conviction or a plea of guilty for committing larceny is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this section.

8. The fact that an operator of a mercantile establishment may bring an action against an individual as provided in this section shall not limit the right of such merchant to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties prior to the commencement of any legal action.

9. In any action brought under subdivision six of this section, the court shall consider in the interest of justice mitigating circumstances that bear directly upon the actions of the parent or legal guardian in supervising the unemancipated minor who committed the larceny.

10. An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction.

11. The provisions of this section shall not be construed to prohibit or limit any other cause of action which an operator of a mercantile establishment may have against a person who unlawfully takes merchandise from the mercantile establishment.



12. Any testimony or statements of the defendant or unemancipated minor child of the defendant or any evidence derived from an attempt to reach a civil settlement or from a civil proceeding brought under this section shall be inadmissible in any other court proceeding relating to such larceny.

## North Carolina

### § 1-538.2. Civil liability for larceny, shoplifting, theft by employee, embezzlement, and obtaining property by false pretense

(a) Any person, other than an unemancipated minor, who commits an act that is punishable under G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100 is liable for civil damages to the owner of the property. In any action brought by the owner of the property, the owner is entitled to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the theft or embezzlement or fraud of an employee. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable attorneys' fees. The total compensatory and consequential damages awarded to a plaintiff against a defendant under this section shall not be less than one hundred fifty dollars (\$ 150.00) and shall not exceed one thousand dollars (\$ 1,000), except an act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this section.

(b) The parent or legal guardian, having the care, custody and control of an unemancipated minor who commits an act punishable under G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100, is civilly liable to the owner of the property obtained by the act if such parent or legal guardian knew or should have known of the propensity of the child to commit such an act; and had the opportunity and ability to control the child, and made no reasonable effort to correct or restrain the child. In an action brought against the parent or legal guardian by the owner, the owner is entitled to recover the amounts specified in subsection (a) except punitive damages. The total compensatory and consequential damages awarded to a plaintiff against the parent or legal guardian shall not be less than one hundred fifty dollars (\$ 150.00) and shall not exceed one thousand dollars (\$ 1,000).

(c) An action may be brought under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action.

(c1) For the purposes of this section, consequential damages shall include, but shall not be limited to:

(1) The salary paid to any employee for investigation, reporting, testifying, or any other time related to the investigation or prosecution for any violation under subsection (a) of this section; and

(2) Any costs, such as mileage, postage, stationery, or telephone expenses that were incurred as a result of the violation.

(c2) The owner of the property may seek payment for damages under subsections (a) and (b) of this section prior to filing a civil action, by sending the violator a demand letter. If such a letter is sent, it shall be substantially similar to the following:

"Our records show that on (date), you unlawfully took possession of property from (store name/owner of the property), located in (city, state), without the consent of (store name/owner of the property), without paying for the property, and with the intent of converting the property to your own use. In accordance with G.S. 1-538.2, we are authorized to demand that you pay damages of one hundred fifty dollars (\$ 150.00).

In the event you fail to comply with our demand for one hundred fifty dollars (\$ 150.00) within 15 days from the date of your receipt of the notice, you may be held civilly liable for an amount not less than one hundred fifty dollars (\$ 150.00) and not more than one thousand dollars (\$ 1,000) in a civil action against you to recover the penalties and damages authorized by law, which include court costs and attorneys' fees. If you pay the one hundred fifty dollars (\$ 150.00), (store name/owner of the property) will have no further civil remedy against you arising from the events occurring on (date).

If you are the parent or legal guardian of an unemancipated minor who unlawfully took possession of property as set out above, you can be held liable if you knew or should have known of the propensity of the child to commit the act complained of, and you had the opportunity and ability to control the child and you made no reasonable effort to correct or restrain the child.

If you believe you have received this notice in error, please contact (name) immediately.

**YOU HAVE A RIGHT TO CONTEST YOUR LIABILITY IN COURT."**

(c3) The owner of the property sending the demand letter required by this section shall have qualified privilege from any civil liability resulting therefrom provided that there is no excessive publication and that the owner acted in good faith and without malice.

(c4) If the recipient of a notice pursuant to subsection (c2) of this section pays the demanded one hundred fifty dollars (\$ 150.00) within 15 days of the recipient's receipt of the notice, the owner of the property shall have no further civil remedy against that violator for the incident described in the notice.

(d) Nothing contained in this act shall prohibit recovery upon any other theory in the law.

## North Dakota

### **51-21-05. Civil remedy against adult shoplifters or the parent of a minor shoplifter.**

1. An adult who commits the offense of theft from a merchant is civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of the civil action, and reasonable attorney's fees.

2. The parent or legal guardian of an unemancipated minor who while living with the parent or legal guardian commits the offense of theft from a merchant is civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of the civil action, and reasonable attorney's fees. If the merchant knows or reasonably should know that the individual believed to have committed theft is a minor, the merchant may not request that the individual sign an admission of theft or other similar declaration unless the minor's parent, guardian, or attorney is present. An admission in violation of this subsection is not valid and is inadmissible in a civil or criminal action.

3. A conviction or plea of guilty for the theft is not a prerequisite to the bringing of a civil action under this section. However, if a criminal theft charge is filed against the individual, the merchant may not pursue civil damages until completion of the criminal action.

4. A parent or legal guardian of an unemancipated minor is not civilly liable under this section if it is determined by the court that one of the principal rationales for the shoplifting was a desire on the part of the minor to cause the minor's parent or legal guardian to be liable under this section.

## Ohio

### **§ 2307.61 Property owner may recover for willful damage or theft; written demand for payment.**

(A) If a property owner brings a civil action pursuant to division (A) of section 2307.60 of the Revised Code to recover damages from any person who willfully damages the owner's property or who commits a theft offense, as defined in section 2913.01 of the Revised Code, involving the owner's property, the property owner may recover as follows:

(1) In the civil action, the property owner may elect to recover moneys as described in division (A)(1)(a) or (b) of this section:

(a) Compensatory damages that may include, but are not limited to, the value of the property and liquidated damages in whichever of the following amounts applies:

(i) Fifty dollars, if the value of the property was fifty dollars or less at the time it was willfully damaged or was the subject of a theft offense;

(ii) One hundred dollars, if the value of the property was more than fifty dollars, but not more than one hundred dollars, at the time it was willfully damaged or was the subject of a theft offense;

(iii) One hundred fifty dollars, if the value of the property was more than one hundred dollars at the time it was willfully damaged or was the subject of a theft offense.

(b) Liquidated damages in whichever of the following amounts is greater:

(i) Two hundred dollars;

(ii) Three times the value of the property at the time it was willfully damaged or was the subject of a theft offense, irrespective of whether the property is recovered by way of replevin or otherwise, is destroyed or otherwise damaged, is modified or otherwise altered, or is resalable at its full market price. This division does not apply to a check, negotiable order of withdrawal, share draft, or other negotiable instrument that was returned or dishonored for insufficient funds by a financial institution if the check, negotiable order of withdrawal, share draft, or other negotiable instrument was presented by an individual borrower to a licensee under sections 1321.35 to 1321.48 of the Revised Code for a loan transaction.

(2) In a civil action in which the value of the property that was willfully damaged or was the subject of a theft offense is less than five thousand dollars, the property owner may recover damages as described in division (A)(1)(a) or (b) of this section and additionally may recover the reasonable administrative costs, if any, of the property owner that were incurred in connection with actions taken pursuant to division (A)(2) of this section, the cost of maintaining the civil action, and reasonable attorney's fees, if all of the following apply:

- (a) The property owner, at least thirty days prior to the filing of the civil action, serves a written demand for payment of moneys as described in division (A)(1)(a) of this section and the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken pursuant to division (A)(2) of this section, upon the person who willfully damaged the property or committed the theft offense.
- (b) The demand conforms to the requirements of division (C) of this section and is sent by certified mail, return receipt requested.
- (c) Either the person who willfully damaged the property or committed the theft offense does not make payment to the property owner of the amount specified in the demand within thirty days after the date of its service upon that person and does not enter into an agreement with the property owner during that thirty-day period for that payment or the person who willfully damaged the property or committed the theft offense enters into an agreement with the property owner during that thirty-day period for that payment but does not make that payment in accordance with the agreement.
- (B) If a property owner who brings a civil action pursuant to division (A) of section 2307.60 of the Revised Code to recover damages for willful damage to property or for a theft offense attempts to collect the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken pursuant to division (A)(2) of this section, the cost of maintaining the civil action, and reasonable attorney's fees under authority of that division and if the defendant prevails in the civil action, the defendant may recover from the property owner reasonable attorney's fees, the cost of defending the civil action, and any compensatory damages that may be proven.
- (C) For purposes of division (A)(2) of this section, a written demand for payment shall include a conspicuous notice to the person upon whom the demand is to be served that indicates all of the following:
- (1) The willful property damage or theft offense that the person allegedly committed;
  - (2) That, if the person makes payment of the amount specified in the demand within thirty days after its service upon the person or enters into an agreement with the property owner during that thirty-day period for that payment and makes that payment in accordance with the agreement, the person cannot be sued by the property owner in a civil action in relation to the willful property damage or theft offense;
  - (3) That, if the person fails to make payment of the amount specified in the demand within thirty days after the date of its service upon the person and fails to enter into an agreement for that payment with the property owner during that thirty-day period or enters into an agreement for that payment with the property owner during that thirty-day period but does not make that payment in accordance with the agreement, the person may be sued in a civil action in relation to the willful property damage or theft offense;
  - (4) The potential judgment that the person may be required to pay if the person is sued in a civil action in relation to the willful property damage or theft offense and judgment is rendered against the person in that civil action;
  - (5) That, if the person is sued in a civil action by the property owner in relation to the willful property damage or theft offense, if the civil action requests that the person be required to pay the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken pursuant to division (A)(2) of this section, the cost of maintaining the action, and reasonable attorney's fees, and if the person prevails in the civil action, the person may recover from the property owner reasonable attorney's fees, the cost of defending the action, and any compensatory damages that can be proved.
- (D) If a property owner whose property was willfully damaged or was the subject of a theft offense serves a written demand for payment upon a person who willfully damaged the property or committed the theft offense and if the person makes payment of the amount specified in the demand within thirty days after the date of its service upon the person or the person enters into an agreement with the property owner during that thirty-day period for that payment and makes payment in accordance with the agreement, the property owner shall not file a civil action against the person in relation to the willful property damage or theft offense.
- (E) If a property owner whose property was willfully damaged or was the subject of a theft offense serves a written demand for payment upon a person who willfully damaged the property or committed the theft offense and if the person, within thirty days after the date of service of the demand upon the person, enters into an agreement with the property owner for the payment of the amount specified in the demand but does not make that payment in accordance with the agreement, the time between the entering of the agreement and the failure to make that payment shall not be computed as any part of the period within which a civil action based on the willful property damage or theft offense must be brought under the Revised Code.
- (F) A civil action to recover damages for willful property damage or for a theft offense may be joined with a civil action that is brought pursuant to Chapter 2737. of the Revised Code to recover the property. If the two actions are joined, any compensatory damages recoverable by the property owner shall be limited to the value of the property.
- (G)

(1) In a civil action to recover damages for willful property damage or for a theft offense, the trier of fact may determine that an owner's property was willfully damaged or that a theft offense involving the owner's property has been committed, whether or not any person has pleaded guilty to or has been convicted of any criminal offense or has been adjudicated a delinquent child in relation to any act involving the owner's property.

(2) This section does not affect the prosecution of any criminal action or proceeding or any action to obtain a delinquent child adjudication in connection with willful property damage or a theft offense.

(H) As used in this section:

(1) "Administrative costs" includes the costs of written demands for payment and associated postage under division (A)(2) of this section.

(2) "Value of the property" means one of the following:

(a) The retail value of any property that is offered for sale by a mercantile establishment, irrespective of whether the property is destroyed or otherwise damaged, is modified or otherwise altered, or otherwise is not resalable at its full market price;

(b) The face value of any check or other negotiable instrument that is not honored due to insufficient funds in the drawer's account, the absence of any drawer's account, or another reason, and all charges imposed by a bank, savings and loan association, credit union, or other financial institution upon the holder of the check or other negotiable instrument;

(c) The replacement value of any property not described in division (H)(1) or (2) of this section.

**§ 2307.60 Civil recovery for criminal act; record of conviction as evidence; when offender barred from recovering in tort action.**

(A)

(1) Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code.

(2) A final judgment of a trial court that has not been reversed on appeal or otherwise set aside, nullified, or vacated, entered after a trial or upon a plea of guilty, but not upon a plea of no contest or the equivalent plea from another jurisdiction, that adjudges an offender guilty of an offense of violence punishable by death or imprisonment in excess of one year, when entered as evidence in any subsequent civil proceeding based on the criminal act, shall preclude the offender from denying in the subsequent civil proceeding any fact essential to sustaining that judgment, unless the offender can demonstrate that extraordinary circumstances prevented the offender from having a full and fair opportunity to litigate the issue in the criminal proceeding or other extraordinary circumstances justify affording the offender an opportunity to relitigate the issue. The offender may introduce evidence of the offender's pending appeal of the final judgment of the trial court, if applicable, and the court may consider that evidence in determining the liability of the offender.

(B)

(1) As used in division (B) of this section:

(a) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons. "Tort action" includes, but is not limited to, a product liability claim, as defined in section 2307.71 of the Revised Code, and an asbestos claim, as defined in section 2307.91 of the Revised Code, an action for wrongful death under Chapter 2125. of the Revised Code, and an action based on derivative claims for relief.

(b) "Residence" has the same meaning as in section 2901.05 of the Revised Code.

(2) Recovery on a claim for relief in a tort action is barred to any person or the person's legal representative if any of the following apply:

(a) The person has been convicted of or has pleaded guilty to a felony, or to a misdemeanor that is an offense of violence, arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the tort action.

(b) The person engaged in conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence and that conduct was a proximate cause of the injury or loss for which relief is claimed in the tort action, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor.

(c) The person suffered the injury or loss for which relief is claimed in the tort action as a proximate result of the victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence acting against the person in self-defense, defense of another, or defense of the victim's residence, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor. Division (B)(2)(c) of this section does not apply if the person who suffered the injury or loss, at the time of the victim's act of self-defense, defense of another, or defense of residence, was an innocent bystander who had no connection with the underlying conduct that prompted the victim's exercise of self-defense, defense of another, or defense of residence.

(3) Recovery against a victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence, on a claim for relief in a tort action is barred to any person or the person's legal representative if conduct the person engaged in against that victim was a proximate cause of the injury or loss for which relief is claimed in the tort action and that conduct, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor.

(4) Divisions (B)(1) to (3) of this section do not apply to civil claims based upon alleged intentionally tortious conduct, alleged violations of the United States Constitution, or alleged violations of statutes of the United States pertaining to civil rights. For purposes of division (B)(4) of this section, a person's act of self-defense, defense of another, or defense of the person's residence does not constitute intentionally tortious conduct.

#### **§ 3109.09 Liability of parents for destructive acts or theft by their children.**

(A) As used in this section, "parent" means one of the following:

(1) Both parents unless division (A)(2) or (3) of this section applies;

(2) The parent designated the residential parent and legal custodian pursuant to an order issued under section 3109.04 of the Revised Code that is not a shared parenting order;

(3) The custodial parent of a child born out of wedlock with respect to whom no custody order has been issued.

(B) Any owner of property, including any board of education of a city, local, exempted village, or joint vocational school district, may maintain a civil action to recover compensatory damages not exceeding ten thousand dollars and court costs from the parent of a minor if the minor willfully damages property belonging to the owner or commits acts cognizable as a "theft offense," as defined in section 2913.01 of the Revised Code, involving the property of the owner. The action may be joined with an action under Chapter 2737. of the Revised Code against the minor, or the minor and the minor's parent, to recover the property regardless of value, but any additional damages recovered from the parent pursuant to this section shall be limited to compensatory damages not exceeding ten thousand dollars, as authorized by this section. A finding of willful destruction of property or of committing acts cognizable as a theft offense is not dependent upon a prior finding that the child is a delinquent child or upon the child's conviction of any criminal offense.

(C)

(1) If a court renders a judgment in favor of a board of education of a city, local, exempted village, or joint vocational school district in an action brought pursuant to division (B) of this section, if the board of education agrees to the parent's performance of community service in lieu of full payment of the judgment, and if the parent who is responsible for the payment of the judgment agrees to voluntarily participate in the performance of community service in lieu of full payment of the judgment, the court may order the parent to perform community service in lieu of providing full payment of the judgment.

(2) If a court, pursuant to division (C)(1) of this section, orders a parent to perform community service in lieu of providing full payment of a judgment, the court shall specify in its order the amount of the judgment, if any, to be paid by the parent, the type and number of hours of community service to be performed by the parent, and any other conditions necessary to carry out the order.

(D) This section shall not apply to a parent of a minor if the minor was married at the time of the commission of the acts or violations that would otherwise give rise to a civil action commenced under this section.

(E) Any action brought pursuant to this section shall be commenced and heard as in other civil actions.

(F) The monetary limitation upon compensatory damages set forth in this section does not apply to a civil action brought pursuant to section 2307.70 of the Revised Code.

## Oklahoma

Civil Liabilities for Shoplifting, 21 Oklahoma Stat. §1731.1

### § 1731.1. Shoplifting--Civil liabilities--Public service in lieu of damages--Limitations--Jurisdiction

A. As used in this section:

1. "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents;
2. "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale;
3. "Unemancipated minor" means any unmarried person under eighteen (18) years of age under direct supervision and care of the parent or legal guardian of the minor; and
4. "Emancipated minor" means any person under eighteen (18) who is married and/or not under direct supervision and care of the parent or legal guardian of the minor.

B. An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller, or merchant and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable in a civil action for the retail price of the merchandise if it is unsalable or the percentage of the diminished value of the merchandise due to the conversion together with attorney fees and court costs.

C. The parent or legal guardian having custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller, or merchant, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in a civil action for the retail price of the merchandise if it is unsalable or the percentage of the diminished value of the merchandise due to the conversion together with attorney fees and court costs.

D. An adult, emancipated minor or unemancipated minor against whom judgment is rendered for taking possession of any goods, wares or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller or merchant and with the intention of converting such goods, wares or merchandise to his or her own use without having paid the purchase price thereof, may also be required to pay exemplary damages.

E. In lieu of the exemplary damages prescribed by subsection D of this section, any adult, emancipated minor or unemancipated minor against whom a judgment for exemplary damages has been rendered hereunder may be required to perform public services designated by the court; provided, that in no event shall any such person be required to perform less than the number of hours of such public service necessary to satisfy the damages assessed by the court at the federal minimum wage prevailing in the state at the time of judgment, but in no case less than Fifty Dollars (\$ 50.00) nor more than Five Hundred Dollars (\$ 500.00).

F. The provisions of this section are in addition to criminal penalties and other civil remedies and shall not limit merchants or other persons from electing to pursue criminal penalties and other civil remedies, so long as a double recovery does not result.

G. For the purpose of this section, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the Department of Human Services.

H. Notwithstanding any other provision of law, a civil action or proceeding pursuant to this section may be commenced at any time within two (2) years after the conduct in violation of a provision of this section terminates or the cause of action accrues. If a criminal prosecution is brought by the state or by the United States to punish, prevent, or restrain any criminal action contained or described in this section, the running of the period of limitations prescribed by this section shall be suspended during the pendency of such prosecution, action, or proceeding and for one (1) year following its termination or conclusion.

I. An action for recovery of damages, pursuant to this section, may be brought in the small claims division of the district court where the damages sought are within the jurisdictional limits of the court, or in any other appropriate court.

## Oregon

### 30.875 Civil damages for shoplifting or taking of agricultural produce.

(1) An adult or an emancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment, or who takes from any real property any agricultural produce kept, grown or raised on the

property for purposes of sale, without the consent of the owner and with the intention of converting such merchandise or produce to the individual's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise, shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise or produce not to exceed \$ 500, and for an additional penalty to the owner of not less than \$ 100 nor more than \$ 250.

(2) The parents having custody of an unemancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment, or who takes from any real property any agricultural produce kept, grown or raised on the property for purposes of sale, without the consent of the owner, and with the intention of converting such merchandise or produce to the minor's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise or who engages in conduct described in ORS 164.125, 164.132 or 164.373, shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise or produce not to exceed \$ 250, plus an additional penalty to the owner of not less than \$ 100 nor more than \$ 250. Persons operating a foster home certified under ORS 418.625 to 418.645 are not liable under this subsection for the acts of children not related to them by blood or marriage and under their care.

(3) A conviction for theft is not a condition precedent to the maintenance of a civil action under this section.

(4) A civil liability under this section is not limited by any other law that limits liability of parents of minor children.

(5) An action for recovery of damages under this section may be brought in any court of competent jurisdiction, including the small claims department of a circuit court if the total damages do not exceed the jurisdictional limit of the small claims department.

(6) The fact that an owner or seller of merchandise or agricultural produce may bring an action against an individual for damages as provided in this section shall not limit the right of the owner or seller to demand, in writing, that a person who is liable for damages under this section remit said damages prior to the commencement of any legal action.

(7) Judgments, but not claims, arising under this section may be assigned.

(8) An action under this section may not be brought based on a dishonored check, draft or order for payment of money if an action can be brought on the dishonored check, draft or order under ORS 30.701.

(9) An action under this section must be commenced within three years after the merchandise or agricultural produce is taken.

## Pennsylvania

42 Pa.C.S. § 8308

### § 8308. Damages in actions on retail theft.

(a) General rule. — In a civil action based on retail theft, as defined in 18 Pa.C.S. § 3929(a) (relating to retail theft), a court of competent jurisdiction shall utilize the following remedies:

(1) Order the defendant to restore the merchandise to the plaintiff in its original condition, if possible.

(2) Award damages as follows:

(i) If it is not possible to restore the merchandise in its original condition under paragraph (1), award the value of the merchandise as damages.

(ii) Award actual damages arising from the incident. Damages under this subparagraph do not include the loss of time or wages incurred by the plaintiff in connection with the apprehension and prosecution of the defendant.

(iii) Award reasonable attorney fees and reasonable court costs.

(3) Award a civil penalty to the plaintiff in the amount of the value of the merchandise plus \$ 150.

(b) Minors. — If the defendant is a minor, the act of July 27, 1967 (P.L.186, No.58), entitled "An act imposing liability upon parents for personal injury, or theft, destruction, or loss of property caused by the willful, tortious acts of children under eighteen years of age, setting forth limitations, and providing procedure for recovery," applies.

(c) Criminal disposition. — Criminal prosecution under 18 Pa.C.S. § 3929 is not a prerequisite to the applicability of this section.

(d) Limitations.

(1) The plaintiff shall send a notice to the defendant's last known address giving the defendant 20 days to respond before a civil action may be commenced.

(2) No civil action under this section may be maintained if the defendant has paid the plaintiff a penalty equal to the retail value of the merchandise, not to exceed \$ 500, plus the sum of \$ 150.

(e) Release. — If the person to whom a written demand is made complies with such demand within 20 days after the receipt of the demand, that person shall be given a written release from further civil liability with respect to the specific act of retail theft.

## **Rhode Island**

### **§ 11-41-28. Civil restitution for shoplifting**

(a) An adult or emancipated minor who commits or attempts to commit a larceny of goods for sale on the premises of a merchant as set forth in § 11-41-20 shall be civilly liable to the merchant in an amount consisting of:

- (1) Not more than the retail value of the merchandise if not recovered in merchantable condition; plus
- (2) A penalty of not more than one hundred dollars (\$ 100); plus
- (3) Court costs.

(b) A store employee shall be liable in a civil action for larceny of goods for sale on the premises of his or her merchant employer and for larceny of cash from the merchant. The civil liability to the merchant shall be in the amount consisting of:

- (1) Not more than the value of the goods or cash; plus
- (2) A penalty assessed of not more than one hundred dollars (\$ 100); plus
- (3) Court costs.

(c) A conviction or a plea of guilty to the offense of shoplifting is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this section.

(d) The fact that a merchant may bring action against an individual as provided in this section shall not limit the right of the merchant to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages prior to the consideration of the commencement of any legal action.

(e) An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction, including the small claims court of a district court, if the total damages do not exceed the jurisdictional limit of the small claims court.

(f) The provisions of this section shall not be construed to prohibit or limit any other course of action permitted by law which a merchant may have against a person who unlawfully takes merchandise from the merchant's premise.

(g) If the person to whom a written demand is made complies with the demand within twenty (20) days after the receipt of the demand, that person shall be given a written release from further civil liability with respect to the specific act of retail theft; provided, that written demand shall not include penalties.

## **South Carolina**

### **§ 15-75-40. Definitions.**

(A) As used in this section:

- (1) "Shoplifting" means an act punishable under Section 16-13-110 and also includes the theft of cash or merchandise by employees of a mercantile establishment;
- (2) "Store or other retail mercantile establishment" means an establishment as defined in Section 16-13-105(5);
- (3) "Emancipated minor" means a person over the age of sixteen at the time of the alleged shoplifting and who was no longer a dependent of or in the custody of a parent or legal guardian.

(B) In a proceeding brought under this section the burden of proof is by a preponderance of the evidence.

(C) An adult or emancipated minor who commits shoplifting against the property of a store or other retail mercantile establishment is civilly liable to the operator of the establishment in an amount consisting of:

- (1) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus
- (2) a penalty not to exceed the greater of three times the retail price of the merchandise or one hundred fifty dollars. In no event may the penalty exceed five hundred dollars.

(D) Custodial parents or legal guardians of an unemancipated minor who knew or should have known of the minor's propensity to steal are civilly liable for the minor who commits shoplifting against the property of a store or other retail mercantile establishment to the operator of the establishment in an amount consisting of:

- (1) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus
- (2) a penalty not to exceed the greater of three times the retail price of the merchandise or one hundred fifty dollars. In no event may the penalty exceed five hundred dollars.

(E) A conviction or a plea of guilty for committing shoplifting is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this section.



(F) The fact that an operator of a store or other retail mercantile establishment may bring an action against an individual as provided in this section does not limit the right of the merchant to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties before the commencement of a legal action.

(G) (1) A written notice sent by the operator of a store or other mercantile establishment to an individual as provided in subsection (F) must be sent by certified mail and must state substantially as follows:

"( Date of Mailing ), 19

(Name)

(Address)

(City)

This letter is written notice of demand for payment of damages in the amount of (amount of damages) arising out of your shoplifting of the following personal property owned by (the undersigned or other owner) :

(list of property)

Pursuant to Section 15-75-40, Code of Laws of South Carolina, 1976, this letter is further notice that if the amount stated above is not paid, or a written agreement as to its payment is not reached within thirty days of the date of mailing this letter, (I) (we) (other owner) intend to bring a legal action against you for the amount, plus attorney's fees, court costs, and other relief provided by law.

(Name)

(Address of business)

(City)

(person sending notice) "

(2) The date of mailing of the notice provided by this subsection is the later of the date of mailing stated in the notice or the date on the certified mail receipt when the notice was delivered to the United States mail.

(H) In an action brought under subsection (D) of this section, the court shall consider in the interest of justice mitigating circumstances that bear directly upon the actions of the custodial parent or legal guardian in supervising the unemancipated minor who committed the shoplifting. These mitigating circumstances may include, but are not limited to, whether or not the unemancipated minor had demonstrated a propensity to steal or tendencies toward kleptomania and whether or not the custodial parent or legal guardian had notice or knowledge of the unemancipated minor's propensity to steal or tendencies toward kleptomania.

(I) An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction.

(J) The provisions of this section may not be construed to prohibit or limit any other cause of action which an operator of a store or other retail mercantile establishment may have against a person who unlawfully takes merchandise from the establishment.

(K) Testimony or statements of the defendant or unemancipated minor child of the defendant or any evidence derived from an attempt to reach a civil settlement or from a civil proceeding brought under this section is inadmissible in any other court proceeding related to the shoplifting.

## South Dakota

### **22-30A-19.1. Retail theft — Penalty.**

Any adult, or any emancipated minor as defined in § 25-5-24, or any parent or guardian of any unemancipated minor, who takes possession of any goods, wares, or merchandise displayed or offered for sale by a store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting the goods to the person's own use without having paid the purchase price, is liable to the owner or seller for the retail value of the merchandise, regardless of whether or not the merchandise has been recovered in undamaged condition by the owner or seller. In addition, the owner or seller is entitled to a penalty of four times the retail value of the merchandise, or one hundred dollars, whichever is greater.

## Tennessee

### **39-14-144. Civil liability of adult, parent or guardian for theft of retail merchandise by minor.**

(a) If the appropriate district attorney general consents to use of this section as provided in subsection (i), in lieu of any criminal penalties imposed by § 39-14-105 for theft offenses, any adult or parent or guardian of a minor who willfully takes possession of merchandise from a retail merchant with the intent to convert the merchandise to personal use without paying the purchase price is subject to civil liability, should the merchant prevail, as follows:

(1) For the adult or emancipated minor:

- (A) The greater of one hundred dollars (\$100) or an amount three (3) times the listed retail price of the merchandise taken if the merchant does not recover the merchandise;
- (B) The greater of one hundred dollars (\$100) or an amount three (3) times the difference between the value of the damaged merchandise and the value of the merchandise prior to its conversion if the merchant recovers the merchandise but it is in a damaged state; or
- (C) The greater of one hundred dollars (\$100) or an amount twice the listed retail price of the merchandise if the merchant recovers the merchandise in the same condition it was in prior to the conversion; or
- (2) For the parent or legal guardian having custody of an unemancipated minor who has been negligent in the supervision of the unemancipated minor:
  - (A) The greater of one hundred dollars (\$100) or an amount three (3) times the listed retail price of the merchandise taken if the merchant does not recover the merchandise;
  - (B) The greater of one hundred dollars (\$100) or an amount three (3) times the difference between the value of the damaged merchandise and the value of the merchandise prior to its conversion if the merchant recovers the merchandise but it is in a damaged state; or
  - (C) The greater of one hundred dollars (\$100) or an amount twice the listed retail price of the merchandise if the merchant recovers the merchandise in the same condition it was in prior to the conversion.
- (b) Civil liability under this section is not limited by any other law concerning the liability of parents or guardians or minors.
- (c) A conviction for the offense of shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section.
- (d) The fact that a mercantile establishment may bring an action against an individual as provided in this section shall not limit the right of the establishment to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages prior to the consideration of the commencement of any legal action.
- (e) An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction, including a court of general sessions, if the total damages do not exceed the jurisdictional limit of the court involved.
- (f) If a written agreement is entered into between the merchant and the person responsible for damages and penalties pursuant to this section concerning the liability of the person and the payment of the damages and penalties, the agreement and the contents of the agreement shall remain confidential as long as the parties to the agreement continue to adhere to its terms.
- (g) The civil remedy conferred upon merchants by this section shall not apply if the listed retail price of the merchandise taken was in excess of five hundred dollars (\$500).
- (h) Use of the civil remedy conferred upon merchants by this section shall not be construed to be a violation of § 39-16-604, prohibiting the compounding of an offense.
- (i) Any demand in writing or other document sent to the adult, parent or guardian of a minor covered by this section shall also be sent to the district attorney general of the judicial district in which the offense occurred. If the appropriate district attorney general has not, within ten (10) days from the date the document was sent, objected to the use of this section in lieu of criminal prosecution, the district attorney general is deemed to have consented to the use of this section by the mercantile establishment. If the mercantile establishment does not send a written demand or other document to the adult, parent or guardian, the district attorney general must be notified and must consent, either orally or in writing, to the use of this section in lieu of criminal prosecution.
- (j) Whenever a retail merchant, the merchant's agent, or the merchant's employee apprehends an adult or minor who has committed theft as described in subsection (a), the merchant, agent, or employee shall not at that time enter into any written agreement to accept civil damages in lieu of criminal penalties or actually accept any civil damages.

## Texas

Texas Civ. Prac. & Rem. Code § 134.001 et seq.

### **Sec. 134.003. Liability.**

- (a) A person who commits theft is liable for the damages resulting from the theft.
- (b) A parent or other person who has the duty of control and reasonable discipline of a child is liable for theft committed by the child.

### **Sec. 134.005. Recovery.**

- (a) In a suit under this chapter, a person who has sustained damages resulting from theft may recover:

- (1) under Section 134.003(a), from a person who commits theft, the amount of actual damages found by the trier of fact and, in addition to actual damages, damages awarded by the trier of fact in a sum not to exceed \$1,000; or
  - (2) from a parent or other person who has the duty of control and reasonable discipline of a child, for an action brought under Section 134.003(b), the amount of actual damages found by the trier of fact, not to exceed \$5,000.
- (b) Each person who prevails in a suit under this chapter shall be awarded court costs and reasonable and necessary attorney's fees.

## Utah

### **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.

## Vermont

13 Vermont Statutes Ann. § 2579

### § 2579. Civil recovery for retail theft

(a) Any person over the age of 16 years or any emancipated minor who commits the offense of retail theft against a retail mercantile establishment in violation of section 2575 of this title shall be civilly liable to the retail mercantile establishment in an amount consisting of:

(1) damages equal to the retail price of the merchandise if the item is not returned in a merchantable condition; and  
(2) a civil penalty of two times the retail price of the merchandise, to be not less than \$ 25.00 and not more than \$ 300.00.

(b) The fact that an action may be brought against an individual as provided in this section shall not limit the right of a retail mercantile establishment to demand, in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties prior to the commencement of any legal action.

(c) If the person to whom a demand is made complies with the demand, that person shall incur no further civil liability for that specific act of retail theft.

(d) Any demand made under this section shall be accompanied by a copy of this law.

(e) A criminal prosecution under section 2575 of this title is not a prerequisite to the applicability of this section and such a criminal prosecution shall not bar an action under this section. An action under this section shall not bar a criminal prosecution under section 2575 of this title.

(f) The provisions of this section shall not be construed to prohibit or limit any other cause of action which a retail mercantile establishment may have against a person who unlawfully takes merchandise from a retail mercantile establishment, except as provided in subsection (c) of this section.

(g) Any testimony or statements by the defendant or any evidence derived from an attempt to reach a civil settlement or from a civil proceeding brought under this section shall be inadmissible in any other court proceeding relating to such retail theft.

(h) If a retail mercantile establishment files suit to recover damages and penalties pursuant to subsection (a) of this section and the mercantile establishment fails to appear at a hearing in such proceedings without excuse from the court, the court shall dismiss the suit with prejudice and award costs to the defendant.

(i) A person who knowingly uses the provisions of this section to demand or extract money from a person who is not legally obligated to pay a penalty shall be imprisoned not more than one year or fined not more than \$ 1,000.00, or both.

## Virginia

Va. Code Section 18.2-104.1 and/or Va. Code Section 8.01-44.4

### § 8.01-44.4. Action for shoplifting and employee theft

A. A merchant may recover a civil judgment against any adult or emancipated minor who shoplifts from that merchant for two times the unpaid retail value of the merchandise, but in no event an amount less than \$ 50.

However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than \$ 350.

B. A merchant may recover a civil judgment against any person who commits employee theft for two times the unpaid retail value of the merchandise, but in no event an amount less than \$ 50. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than \$ 350.

C. The prevailing party in any action brought pursuant to this section shall be entitled to reasonable attorneys' fees and costs not to exceed \$ 150.

D. A conviction of or a plea of guilty to a violation of any other statute is not a prerequisite to commencement of a civil action pursuant to this section or enforcement of a judgment. No action may be initiated under this section during the pendency of a criminal prosecution based on the same allegations of fact; however the initiation of any criminal action against the perpetrator for the alleged offense under § 18.2-95, 18.2-96, 18.2-102.1, or 18.2-103 or any other criminal offense defined under subsection F does not preclude a merchant from initiating or maintaining an action under this section once the prosecution has been concluded. A merchant may not recover more than the retail value of the merchandise, or more than the unpaid retail value of the merchandise if the merchandise is not recovered in a merchantable condition, for the same loss if both criminal and civil actions are initiated. However, nothing herein shall preclude a merchant from recovering damages in excess of the retail value of the merchandise, or the unpaid retail value of the merchandise if the merchandise is not recovered in a merchantable condition, if a criminal action is initiated. Nothing herein shall preclude a merchant from nonsuiting the civil action brought pursuant to this section and proceeding criminally under § 18.2-95, 18.2-96, 18.2-102.1, or 18.2-103 or any other criminal offense defined under subsection F.

E. Prior to the commencement of any action under this section, a merchant may demand, in writing, that an individual who may be civilly liable under this section make appropriate payment to the merchant in consideration for the merchant's agreement not to commence any legal action under this section.

F. For purposes of this section:

"Employee theft" means the removal of any merchandise or cash from the premises of the merchant's establishment or the concealment of any merchandise or cash by a person employed by a merchant without the consent of the merchant and with the purpose or intent of appropriating the merchandise or cash to the employee's own or another's use without full payment.

"Shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the purpose or intent of appropriating merchandise to that person's own or another's 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: (i) removing any merchandise from the premises of the merchant's establishment; (ii) concealing any merchandise; (iii) substituting, altering, removing, or disfiguring any label or price tag; (iv) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; (v) disarming any alarm tag attached to any merchandise; or (vi) obtaining or attempting to obtain possession of any merchandise by charging that merchandise to another person without the authority of that person or by charging that merchandise to a fictitious person.

#### **§ 18.2-104.1. Liability upon conviction under § 18.2-103**

Any person who has been convicted of violating the provisions of § 18.2-103 shall be civilly liable to the owner for the retail value of any goods and merchandise illegally converted and not recovered by the owner, and for all costs incurred in prosecuting such person under the provisions of § 18.2-103. Such costs shall be limited to actual expenses, including the base wage of one employee acting as a witness for the Commonwealth and suit costs. Provided, however, the total amount of allowable costs granted hereunder shall not exceed \$ 250, excluding the retail value of the goods and merchandise.

#### **§ 18.2-103. Concealing or taking possession of merchandise; altering price tags; transferring goods from one container to another; counseling, etc., another in performance of such acts**

Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise, (i) willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, or (ii) alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or (iii) counsels, assists, aids or abets another in the performance of any of the above acts, when the value of the goods or merchandise involved in the offense is less than \$ 200, shall be guilty of petit larceny and, when the value of the goods or merchandise involved in the offense is \$ 200 or more, shall be guilty of grand larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment,

while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

## Washington

### **4.24.230. Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying — Adults, minors — Parents, guardians — Notice.**

(1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his or her own use without having paid the purchase price thereof is liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed two thousand eight hundred fifty dollars, plus an additional penalty of not less than one hundred dollars nor more than six hundred fifty dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section.

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his or her own use without having paid the purchase price thereof, is liable as a penalty to the owner or seller for the retail value of such goods, wares, or merchandise not to exceed one thousand four hundred twenty-five dollars plus an additional penalty of not less than one hundred dollars nor more than six hundred fifty dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

(3) Judgments and claims arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons 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.”

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 a penalty described in subsection (1) or (2) of this section.

## West Virginia

### **§ 61-3A-5. Civil liability.**

(a) General rule. — Any person who commits any of the acts described in section one [§ 61-3A-1] of this article shall be civilly liable:

(1) To restore the merchandise to the mercantile establishment; and

(2) If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and

(3) For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and

(4) In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars or double the value of the merchandise, whichever is higher.

(b) Costs and attorneys' fees. — A merchant who is a prevailing party under this section is entitled to costs.

- (c) Effect of conviction. — A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by section three [§ 61-3A-3] of this article is not entitled to recover the penalty imposed by this section.
- (d) Right to demand payment. — The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit said damages or penalty prior to the commencement of any legal action.

## Wisconsin

### **943.51. Retail theft; civil liability.**

- (1) Any person who incurs injury to his or her business or property as a result of a violation of s. 943.50 may bring a civil action against any individual who caused the loss for all of the following:
- (a) The retail value of the merchandise unless it is returned undamaged and unused. A person may recover under this paragraph only if he or she exercises due diligence in demanding the return of the merchandise immediately after he or she discovers the loss and the identity of the person who has the merchandise.
- (am) The retail value of the service provided by a service provider, as defined in s. 943.50 (1) (am). A person may recover under this paragraph only if he or she exercises due diligence in demanding payment for the service.
- (b) Any actual damages not covered under par. (a).
- (2) In addition to sub. (1), if the person who incurs the loss prevails, the judgment in the action may grant any of the following:
- (a)
1. Except as provided in subd. 1m., exemplary damages of not more than 3 times the amount under sub. (1).
- 1m. If the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor, the exemplary damages may not exceed 2 times the amount under sub. (1).
2. No additional proof is required for an award of exemplary damages under this paragraph.
- (b) Notwithstanding the limitations of s. 799.25 or 814.04, all actual costs of the action, including reasonable attorney fees.
- (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed 500 for each violation.
- (3m) Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed 300 for each violation if the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor.
- (3r) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20 or as recompense under s. 969.13 (5) (a) for the same act.
- (4) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.50. A conviction under s. 943.50 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.
- (5) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.
- (6) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

## Wyoming

### **§ 1-1-127. Civil liability for shoplifting.**

- (a) A person over ten (10) years of age who violates W.S. 6-3-404(a) or (b) is civilly liable to the merchant of the property in an amount consisting of:
- (i) Return of the property in original condition or actual damages equal to the full marked or listed price of the property; plus
- (ii) A civil liability of twice the amount of the full marked or listed price of the property but not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00); plus
- (iii) Reasonable attorney's fees and court costs.
- (b) If an unemancipated minor violates W.S. 6-3-404(a) or (b), the parents or guardian of the child shall be civilly liable as provided by subsection (a) of this section, provided liability under this subsection shall not apply to foster parents, to parents whose parental custody and control of the child have been terminated by court order prior to the violation or to any governmental or private agency that has been appointed guardian for the minor child pursuant to court order or action of the department of family services. Civil liability under this subsection is not subject to the

limitation on liability provided by W.S. 14-2-203 or any other law that limits the liability of parents for damages caused by an unemancipated minor.

(c) A conviction or a plea of guilty to a violation of W.S. 6-3-404(a) or (b) is not a prerequisite to the bringing of a civil suit under this section.

(d) An action to recover damages and any civil liability under this section may be brought in small claims court if the total amount of the demand for damages and any civil liability does not exceed the jurisdiction of that court, or in any other appropriate court.

(e) In order to recover damages and any civil liability under this act, the merchant of the property shall also notify law enforcement officials.