



**House
Legislative
Analysis
Section**

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SHOPLIFTING REMEDIES

House Bill 5202 (Substitute H-2)

First Analysis (1-13-88)

RECEIVED

Sponsor: Rep. Wilfred Webb

Committee: Judiciary

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THE APPARENT PROBLEM:

Shoplifting, price tag-switching, and related retail crimes are pervasive and on the rise. They affect not only merchants, but also paying customers, as businesses increase prices to compensate for shoplifting losses. Merchants are frustrated by an overburdened criminal justice system that tends to give low priority to prosecuting shoplifters and by a similarly inadequate juvenile justice system. One way to deter would-be shoplifters and minimize shoplifting losses would be for merchants to demand compensation and a civil penalty, rather than relying on the uncertainties of criminal prosecution or formal juvenile adjudication. Legislation to provide such civil remedies has been proposed.

THE CONTENT OF THE BILL:

The bill would establish civil remedies for shoplifting, price tag-switching, and fraudulently returning goods for refund or credit. It would amend the Revised Judicature Act to authorize merchants to demand payment for the amount of loss, a civil penalty, and reasonable costs of up to \$50. The civil penalty generally would be ten times the retail price of the property, but could not be less than \$40 nor more than \$100. However, the civil penalty would increase to a flat \$200 if the person failed to meet the demand and the matter went to court.

A merchant would have to send a written demand as prescribed by the bill, and the wrongdoer would have 30 days to meet the demand and be protected against further civil action from the merchant. Attached to the demand would be a statement disclosing certain legal options available to the accused. Failure to comply with the demand would mean the merchant could take the matter to small claims court or to any other court of competent jurisdiction and recover the demanded amount, which once the case had been heard in court would include a civil penalty of \$200, rather than \$100. If the offender were an unemancipated minor who lived at home, the money would be recoverable from the parent(s).

A merchant could recover the amount for which a person was civilly liable under the bill only if a formal police report had been filed with the prosecutor or municipal attorney. A merchant who had failed to mark the price on the item in question as required by Public Act 449 of 1976 could not recover the civil penalty.

The bill could not take effect unless Senate Bills 595 and 596 were enacted. Senate Bill 595 would amend the penal code to create the crimes of retail fraud in the first and second degree, a felony and misdemeanor respectively; these are the crimes to which House Bill 5202 would apply. Senate Bill 596 would amend the Code of Criminal Procedure to allow the warrantless arrest of shoplifters under certain circumstances.

MCL 600.2917 and 600.2953

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal impact. (1-11-88)

ARGUMENTS:

For:

The bill would give merchants an effective means of minimizing shoplifting losses. Its method is analogous to that of Public Act 276 of 1984, which dealt with the "bad check" problem for merchants by allowing them to make a written demand for payment, and authorizing double damages when payment was not received within 30 days. Retailers report that only rarely have they had to pursue a matter in court. A demand for payment coupled with both a promise to drop the matter upon payment and the threat of double damages and court action for failure to pay appears to give check writers sufficient incentive to make good on their checks. The marked success experienced with Public Act 276 indicates that the approach can be of benefit in combating the shoplifting problem. A shoplifter faced with the possibility of extra penalties and court action will be more likely to pay the amount owed the merchant, especially when notified that payment would hold the merchant to a promise not to pursue further civil action. By minimizing shoplifting losses for merchants, the bill would minimize the need to raise prices to compensate for shoplifting losses, and thus help to keep prices down. By providing an alternative to prosecution, the bill would ease burdens on the criminal justice system.

For:

Parents of juvenile shoplifters would be subject to the civil remedies offered by the bill. The bill thus would not only minimize retail losses attributable to juvenile shoplifters, but involve parents directly in what might be a developing problem with their child; parents would have a financial incentive to make sure their kids stayed out of trouble.

POSITIONS:

The Greater Detroit Chamber of Commerce supports the bill. (12-17-87)

The Michigan Merchants Council supports the bill. (12-15-87)

The Michigan Retailers Association supports the bill. (12-16-87)

H.B. 5202 (1-13-88)