

SFA

BILL ANALYSIS

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Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 5202 (Substitute S-1 as reported)**Sponsor:** Representative Wilfred Webb**House Committee:** Judiciary**Senate Committee:** Criminal Justice, Urban Affairs, and Economic Development**Date Completed:** 2-24-88**RATIONALE**

Shoplifting, price tag switching, and related retail crimes are widespread and reportedly on the rise. They affect not only merchants, but also paying customers, as businesses increase prices to compensate for shoplifting losses. Merchants have expressed frustration with the overburdened criminal justice system that tends to give low priority to prosecuting shoplifters, and with the similarly inadequate juvenile justice system. Some people believe that one way to deter would-be shoplifters and minimize shoplifting losses would be for merchants to demand compensation and an additional payment, rather than relying on the uncertainties of criminal prosecution or formal juvenile adjudication.

CONTENT

The bill would amend the Revised Judicature Act to establish civil remedies for retail fraud, i.e., shoplifting, switching or altering price tags, and fraudulently returning goods for refund or credit. Merchants would be authorized to demand payment for the amount of loss, an additional amount of 10 times the value of the product, up to \$100. The civil penalty would increase to a flat \$200, however, if the person failed to meet the demand and the matter went to court.

Under the bill, a merchant would have to send a written demand as prescribed by the bill, and the offender would have 30 days to meet the demand and be protected against further civil action from the merchant. A statement specifying certain legal options available to the accused would have to be attached to the demand. Failure to comply with the demand would authorize the merchant to bring a civil action in the small claims division of District Court, or any other court of competent jurisdiction, in order to recover the amount of loss, a \$200 civil penalty and reasonable costs up to \$50.

Under the bill, a merchant could recover the amount for which a person was civilly liable only if a formal police report had been filed with the prosecutor or municipal attorney. If the offender were an unemancipated minor who lived with his or her parents, the penalty would be recoverable from the parents. 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 is tie-barred to Senate Bills 595 and 596 (Public Acts 20 and 19 of 1988, respectively). Senate Bill 595 established the crimes of retail fraud in the first and second degree, a felony and misdemeanor, respectively, the crimes to which House Bill 5202 would apply. Senate Bill 596 allows the warrantless arrest of shoplifters under certain circumstances.

The bill would take effect on June 1, 1988.

MCL 600.2917

SENATE COMMITTEE ACTION

The Senate Committee on Criminal Justice, Urban Affairs, and Economic Development adopted a substitute (S-1) to the bill that would include second degree retail fraud within its provisions for compensation, and that refers to "an amount" of 10 times the value of the product that could be requested by a merchant, rather than "a civil penalty" of 10 times the value. Also, the substitute prescribes specific language, rather than simply guidelines, that would have to be used to notify an accused individual of his or her rights.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

The bill would afford merchants a method of minimizing shoplifting losses. It is analogous to that of Public Act 276 of 1984, which dealt with the "bad check" problem experienced by 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 such 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 bad check writers sufficient incentive to make good on their checks. The marked success experienced with Public Act 276 indicates that the approach could be of benefit in combating shoplifting. A shoplifter faced with the possibility of extra penalties and court action would be more likely to pay the amount owed the merchant, especially when notified that payment would prohibit the merchant from pursuing further civil action. By minimizing shoplifting losses for merchants, the bill would minimize the need to raise prices to compensate for such losses, and thus would help to keep prices down. Also, by providing an alternative to prosecution, the bill would ease burdens on the criminal justice system.

Response: Public Act 276 of 1984 does indeed provide for a method of demanding payment and seeking double damages if payment is not made. The bill, however, would allow the merchant to demand an amount in addition to the price of the product, even if the accused individual responded to the written demand. Also, the provisions of

Public Act 276 allow the demand for payment in lieu of a criminal investigation, whereas the bill would allow the demand for payment only if a police report were filed alleging the commission of retail fraud.

Supporting Argument

Parents of juvenile shoplifters would be subject to the civil remedies proposed by the bill. Thus, the bill not only would minimize retail losses attributable to juvenile shoplifters, but would involve parents directly in what could be a developing problem with the child. Also, parents would have a financial incentive to make sure their children stayed out of trouble.

Opposing Argument

The bill would give undue legal power to merchants. By allowing merchants to demand and receive a sum in addition to the value of the property, the bill would be granting judicial authority to the merchant. If any penalty or damages are to be awarded to merchants because of losses sustained due to a criminal act, the determination of such an amount should be made by a judge. In addition, civil damages should not be recoverable from the defendant before he or she is found guilty of the criminal charges out of which the civil charge arose.

Response: Senate Bill 596 (Public Act 19 of 1988) allows merchants to make warrantless arrests of persons suspected of committing retail fraud, so there is precedent for granting a merchant some legal authority relative to shoplifting charges.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.