



SENATE BILL No. 1169

May 25, 1994, Introduced by Senators FAXON and SMITH and
referred to the Committee on Judiciary

A bill to amend sections 2917 and 2953 of Act No 236 of the
Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

section 2917 as amended by Act No 192 of the Public Acts of 1992
and section 2953 as added by Act No 50 of the Public Acts of
1988, being sections 600 2917 and 600 2953 of the Michigan
Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2917 and 2953 of Act No 236 of the
2 Public Acts of 1961, section 2917 as amended by Act No 192 of
3 the Public Acts of 1992 and section 2953 as added by Act No 50
4 of the Public Acts of 1988, being sections 600 2917 and 600 2953
5 of the Michigan Compiled Laws are amended to read as follows

6 Sec 2917 (1) In a civil action against a library or
7 merchant, an agent of the library or merchant, or an independent

1 contractor providing security for the library or merchant for
2 false imprisonment, unlawful arrest, assault, battery, libel, or
3 slander, if the claim arises out of conduct involving a person
4 suspected of removing or of attempting to remove, without right
5 or permission, goods held for sale in a store from the store or
6 library materials from a library, or of violating section 356c,
7 ~~or~~ 356d, OR 356E of the Michigan penal code, Act No 328 of the
8 Public Acts of 1931, being sections 750 356c, ~~and~~ 750 356d AND
9 750 356E of the Michigan Compiled Laws, and if the merchant,
10 library, agent, or independent contractor had probable cause for
11 believing and did believe that the plaintiff had committed or
12 aided or abetted in the larceny of goods held for sale in the
13 store, or of library materials, or in the violation of section
14 356c, ~~or~~ 356d OR 356E of Act No 328 of the Public Acts of
15 1931, damages for or resulting from mental anguish or punitive,
16 exemplary, or aggravated damages shall not be allowed a plain-
17 tiff unless it is proved that the merchant library agent, or
18 independent contractor used unreasonable force, detained the
19 plaintiff an unreasonable length of time, acted with unreasonable
20 disregard of the plaintiff's rights or sensibilities, or acted
21 with intent to injure the plaintiff

22 (2) As used in this section

23 (a) "Library" includes a public library a library of an
24 educational, historical, or eleemosynary institution or organiza-
25 tion a museum an archive and a repository of public records or
26 historical records, or both

1 (b) "Library material" includes a plate picture
2 photograph engraving painting drawing map newspaper book
3 magazine pamphlet broadside manuscript document letter
4 public record microfilm sound recording audiovisual material
5 magnetic or other tape optical storage disc or other recording
6 medium electronic data processing record artifact and other
7 documentary, written, or printed material

8 Sec 2953 (1) In addition to any penal sanction, a person
9 who commits an act for which he or she could be charged with the
10 crime of retail fraud in the first, ~~or~~ second, OR THIRD degree,
11 as defined in sections 356c, ~~and~~ 356d, AND 356E of the Michigan
12 Penal Code, Act No 328 of the Public Acts of 1931, being sec-
13 tions 750 356c, ~~and~~ 750 356d, AND 750 356E of the Michigan
14 Compiled Laws, shall be liable to the merchant who is the victim
15 of the act for the full retail price of unrecovered property or
16 recovered property that is not in salable condition, and a civil
17 penalty of 10 times the retail price of the property, but not
18 less than \$40 00 and not more than \$100 00

19 (2) The merchant who is the victim of retail fraud in the
20 first, ~~or~~ second, OR THIRD degree, or an agent of the merchant
21 may make a written demand for payment of the amount for which the
22 person who committed the act is liable under subsection (1)

23 Except for a sole proprietorship, a member of management, other
24 than the initial detaining person, shall evaluate the validity of
25 the accusation that the person committed the act and shall
26 approve the accusation in writing before a written demand for
27 payment is issued The demand for payment shall be delivered to

1 the person from whom payment is demanded in person or by
2 certified mail, return receipt requested, and delivery restricted
3 to the addressee The text of the written demand shall be as
4 follows

5 "We have cause to believe that on _____ (date) you com-
6 mitted retail fraud in the first degree, ~~or~~ second degree, OR
7 THIRD DEGREE by _____ (description of action and personal
8 property) in our store If, within 30 days of the time you
9 receive this notice, you return the property in salable condition
10 or pay to us \$_____, which represents the full retail
11 price/remaining balance of the full retail price of the property,
12 plus an amount of 10 times the retail price of the property, but
13 not less than \$40 00 and not more than \$100 00, equaling a total
14 amount of \$_____, we will not take further civil action against
15 you for this incident

16 If you fail to comply with this demand, we have the right to
17 bring an action against you in court for \$_____, which represents
18 the full retail price/remaining balance of the full retail price
19 of the property a \$200 00 civil penalty and our reasonable
20 costs not to exceed \$50 00 equaling a total amount of \$_____ "

21 (3) A merchant shall include with the demand for payment
22 that is delivered to a person pursuant to subsection (2) an
23 attachment The text of the attachment shall be as follows

24 "You are (your minor child is) accused of
25 retail fraud Michigan law allows the merchant to
26 ask in writing that you return or pay for the
27 merchandise and pay an amount of \$_____ If

1 you do, no further civil action will be taken
2 against you This civil action has no effect on
3 possible criminal action

4 You do not have to respond to this letter if
5 you are innocent or choose not to respond
6 However, if you do not respond, the merchant may
7 then sue you in small claims court Both you and
8 the merchant will state your case in your own words
9 without lawyers The decision of the small claims
10 court is final and cannot be appealed

11 If you wish to be represented by a lawyer you
12 may ask that the case against you be heard by the
13 district court You and the merchant may be repre-
14 sented by a lawyer and have the right to appeal to
15 a higher court

16 Questions regarding court procedures can be
17 answered by the clerk of the district court "

18 (4) If the person to whom a written demand is made under
19 subsection (2) complies with the written demand within 30 days
20 after its receipt, that person shall incur no further civil
21 liability to the merchant from the act of retail fraud

22 (5) A person who commits an act described in subsection (1)
23 and who fails to comply with a written demand under

1 subsection (2) shall be liable to the merchant for the full
2 retail price of the property, unless the property was recovered
3 in salable condition, plus a civil penalty of \$200 00 and reason-
4 able costs not exceeding \$50 00

5 (6) If a civil action is filed pursuant to this section and
6 before the trial of the action is commenced the person to whom a
7 written demand was made under subsection (2) pays the merchant in
8 cash the amount demanded subsection (5) ~~shall~~ DOES not apply

9 (7) An action under this section may be brought in the small
10 claims division of the district court or in any other court of
11 competent jurisdiction If the amount demanded exceeds the
12 jurisdiction of the small claims division, the action may still
13 be brought in the small claims division, but the amount recovered
14 shall not exceed the jurisdiction of the small claims division

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

20 (9) A merchant may recover the amount for which a person is
21 civilly liable under this section only if a formal police report
22 is filed with the prosecuting attorney or municipal attorney
23 alleging that the person has committed retail fraud in the first
24 ~~or~~ second, OR THIRD degree or violated a local ordinance sub-
25 stantially corresponding to section 218, 356, 356c, ~~or~~ 356d, OR
26 356E of the Michigan penal code, Act No 328 of the Public Acts
27 of 1931 being sections 750 218 750 356 750 356c ~~and~~

1 750 356d, AND 750 356E of the Michigan Compiled Laws, regardless
2 of the outcome of any criminal action

3 (10) Notwithstanding any other provision of this section a
4 merchant shall not recover a civil penalty for an act of retail
5 fraud in the first, ~~or~~ second, OR THIRD degree with regard to a
6 particular item of property if the merchant violated section 3 of
7 Act No 449 of the Public Acts of 1976 being section 445 353 of
8 the Michigan Compiled Laws, with regard to that item of property
9 and the violation was not caused by the person who committed the
10 act of retail fraud

11 Section 2 This amendatory act shall not take effect unless
12 all of the following bills of the 87th Legislature are enacted
13 into law

14 (a) Senate Bill No 1171

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16 (b) Senate Bill No 1170

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18 (c) Senate Bill No 1168

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20 (d) Senate Bill No 1167

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