



**Testimony for the House Judiciary Committee
February 3, 2016**

HB 190 – Civil Penalties for Shoplifting and Employee Theft – Penalties

SUPPORT

The ACLU of Maryland supports HB 190, which would repeal civil liability to merchants for shoplifting and employee theft.

Maryland statute currently allows for a merchant to demand money from an individual (or his/her parents if the individual is a minor) who commits or attempts to commit an act of shoplifting or employee theft. This law an affront to due process and should be repealed.

First, the statute states that a merchant may recover up to \$1000 when someone attempts to shoplift. This means that an individual could be caught, on site, at the moment it occurs, trying to shoplift. The merchant is out no money. No employee time. Yet, the merchant may demand up to \$1000 from the individual.

Many of the people who shoplift do so because they cannot pay for the item. Under this statute, not only is there the potential that they will go to jail for their theft (with the restitution fee, court fees and other fees attached to the criminal process), but they will also have to pay up to \$1000, which they obviously cannot pay.

Second, there is no prerequisite that there be a criminal prosecution for the theft. (§3-1306). This is similar to the due process problems with current Maryland civil asset forfeiture law where an individual's property can be forfeited without a conviction – a problem this committee will address this session. An individual doesn't have to be found guilty of theft. Nor does an individual even have to be charged with theft. A merchant may just claim theft and demand money.

Finally, this statute has the further problem that parallels double jeopardy: an individual may have to pay a merchant money for property alleged to be stolen, *and* may be charged criminally (though it is not a prerequisite) for that theft. As if paying with loss of jobs, education opportunities and more through an arrest and/or conviction weren't enough, the individual will have to pay money for the property twice: under the civil liability statute and under criminal law, which requires full restitution to the merchant. Worse yet, if the individual is charged and found not guilty, the merchant can still demand money.

There are so many problems with this statute, it must be repealed.

For the foregoing reasons, the ACLU of Maryland supports HB 190.

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