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HOUSE BILL NO. 961

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 20, 2012)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

A BILL to amend and reenact § 8.01-44.4 of the Code of Virginia, relating to shoplifting and employee theft; civil action.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-44.4 of the Code of Virginia is amended and reenacted as follows:

§ 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 *if during the pendency of a criminal prosecution based on the same allegations of fact; however the initiation of any criminal action has been initiated* 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.