

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

ACT 936 OF 1993
HOUSE BILL 1399

4 **By: Representatives Molinaro, K. Wood, Bryant, Wallis, Riable, Young, Cash, Owens, Hall,**
5 **von Grep, and Bennett**

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For An Act To Be Entitled

9 "AN ACT TO PROVIDE FOR A CIVIL CAUSE OF ACTION BY OWNERS
10 OR SELLERS AGAINST PERSONS CAUGHT SHOPLIFTING; AND FOR
11 OTHER PURPOSES."

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Subtitle

14 "AN ACT TO PROVIDE FOR A CIVIL CAUSE OF ACTION BY OWNERS
15 OR SELLERS AGAINST PERSONS CAUGHT SHOPLIFTING."

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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*SECTION 1. An adult or emancipated minor who takes possession of any
20 goods, wares or merchandise displayed or offered for sale by any wholesale or
21 retail store or other mercantile establishment without the consent of the
22 owner or seller, and with the intention of converting such goods, wares or
23 merchandise to his own use without having paid the purchase price thereof,
24 shall be subject to civil damages and penalties as set forth in Section 4 of
25 this act.*

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*SECTION 2. An employee who takes possession of any cash, goods, wares
28 or merchandise without the consent of the owner or seller, and with the intent
29 of converting such cash, goods, wares or merchandise to his own use without
30 having paid the purchase price thereof, shall be subject to civil damages and
31 penalties as set forth in Section 4 of this act in addition to the actual
32 amount of any cash not returned or recovered.*

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*SECTION 3. The parent or legal guardian having custody of an
35 unemancipated minor under the age of eighteen (18) and over the age of six (6)
36 who takes possession of any goods, wares or merchandise displayed or offered*

1 for sale by any wholesale or retail store or other mercantile establishment
2 without the consent of the owner or seller, and with the intention of
3 converting such goods, wares or merchandise to his own use without having paid
4 the purchase price thereof, shall be subject to civil damages and penalties as
5 set forth in Section 4 of this act, provided that for the purpose of this
6 section liability shall not be imposed upon any government entity or private
7 agency which has been assigned any responsibility for the minor child pursuant
8 to court order or action of the Department of Human Services. However, no
9 parent or legal guardian shall be civilly liable under the provisions of this
10 act for any offense committed by an unemancipated minor under the age of
11 eighteen (18) and over the age of six (6) who has not been in their physical
12 custody for the thirty (30) days preceding the offense.

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14 SECTION 4. (a) Under the provisions of this act, the owner or seller
15 shall issue a written demand letter by certified mail for the return of the
16 merchandise or its retail cash equivalent, only if the merchandise has not
17 been returned or recovered, and a penalty in the amount of two hundred dollars
18 (\$200) for an adult or emancipated minor, or one hundred dollars (\$100) for an
19 unemancipated minor, to the last known address of the adult, emancipated
20 minor, employee or parent or legal guardian of the unemancipated minor in
21 question.

22 (b) If the individual to whom the written demand is sent complies with
23 the terms of the demand letter within thirty (30) days of the receipt of the
24 letter, that individual shall not be subject to further civil liability with
25 respect to that specific act of retail theft.

26 (c) If the individual to whom the written demand is sent does not
27 comply within thirty (30) days of the receipt of a demand letter, then the
28 owner or seller may bring action against the individual for the recovery of
29 civil damages and penalties in any court of competent jurisdiction, including
30 the small claims division of a municipal or district court, if the total
31 damages do not exceed the jurisdictional limit of that court. In an action
32 brought under this subsection, the owner or seller may recover the following:

33 (1) civil damages in an amount equal to the retail value of the
34 merchandise, if the merchandise is not recovered or returned; or

35 (2) if the merchandise is recovered or returned, civil damages in an

1 amount equal to the difference between the market value of the recovered or
2 returned merchandise and the retail value of the recovered or returned
3 merchandise; and

4 (3) a civil penalty of up to one thousand dollars (\$1,000) for an adult
5 or emancipated minor, and up to five hundred dollars (\$500) for an
6 unemacipated minor plus court costs, and a reasonable attorney's fee.

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8 SECTION 5. A conviction for violation of Arkansas Code §55-36-103 shall
9 not be a condition precedent to maintenance of a civil action authorized by
10 this act, and nothing in this act shall prohibit or limit any other course of
11 action a retailer or merchant may have against a person who unlawfully takes
12 cash, goods, wares or merchandise from the merchant_s premises.

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14 SECTION 6. All provisions of this act of a general and permanent
15 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
16 Code Revision Commission shall incorporate the same in the Code.

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18 SECTION 7. If any provision of this act or the application thereof to
19 any person or circumstance is held invalid, such invalidity shall not affect
20 other provisions or applications of the act which can be given effect without
21 the invalid provision or application, and to this end the provisions of this
22 act are declared to be severable.

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24 SECTION 8. All laws and parts of laws in conflict with this act are
25 hereby repealed.

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27 /s/Rep. Molinaro, et al

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29 APPROVED: 4/7/93

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As Engrossed: 2/5/93 4/2/93

HB 1399

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