



SENATE BILL No. 908

October 20, 1993, Introduced by Senators VAN REGENMORTER
and WELBORN 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 WITHOUT RIGHT OR PERMISSION, or
 7 of violating section 356c, ~~—or—~~ 356d, OR 356E of the Michigan
 8 penal code Act No 328 of the Public Acts of 1931, being sec-
 9 tions 750 356c, ~~—and—~~ 750 356d, AND 750 356E of the Michigan
 10 Compiled Laws, and if the merchant, library, agent, or indepen-
 11 dent contractor had probable cause for believing and did believe
 12 that the plaintiff had committed or aided or abetted in the lar-
 13 ceny of goods held for sale in the store, or of library materi-
 14 als or ~~—in—~~ the violation of section 356c or 356d of Act No 328
 15 of the Public Acts of 1931 damages for or resulting from mental
 16 anguish or punitive, exemplary, or aggravated damages shall not
 17 be allowed a plaintiff ~~—,~~ unless it is proved that the merchant,
 18 library agent, or independent contractor used unreasonable
 19 force detained the plaintiff an unreasonable length of time
 20 acted with unreasonable disregard of the plaintiff's rights or
 21 sensibilities, or acted 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
 25 organization ~~—~~ a museum, ~~—~~ an archive, ~~—and—~~ OR a reposi-
 26 tory of public records or historical records ~~—, or both—~~

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

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

21 (2) The merchant who is the victim of retail fraud in the
 22 first ~~or~~ second, OR THIRD degree, or an agent of the merchant,
 23 may make a written demand for payment of the amount for which the
 24 person who committed the act is liable under subsection (1)
 25 Except for a sole proprietorship, a member of management ~~—~~
 26 other than the initial detaining person ~~—~~ shall evaluate the
 27 validity of the accusation that the person committed the act and

1 shall approve the accusation in writing before a written demand
2 for payment is issued The demand for payment shall be delivered
3 to the person from whom payment is demanded in person or by cer-
' 4 tified mail, return receipt requested ~~—~~ and delivery restricted
5 to the addressee The text of the written demand shall be as
6 follows

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

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

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

26 "You are (your minor child is) accused of
27 retail fraud Michigan law allows the merchant to

1 ask in writing that you return or pay for the
2 merchandise and pay an amount of \$_____ If
3 you do, no further civil action will be taken
4 against you This civil action has no effect on
5 possible criminal action

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

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

18 Questions regarding court procedures can be
19 answered by the clerk of the district court "

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

1 (5) A person who commits an act described in subsection (1)
2 and who fails to comply with a written demand under
3 subsection (2) ~~shall be~~ IS liable to the merchant for the full
4 retail price of the property, unless the property was recovered
5 in salable condition, plus a civil penalty of \$200 00 and reason-
6 able costs not exceeding \$50 00

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

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

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

22 (9) A merchant may recover the amount for which a person is
23 civilly liable under this section only if a formal police report
24 is filed with the prosecuting attorney or municipal attorney
25 alleging that the person has committed retail fraud in the first,
26 ~~or~~ second, OR THIRD degree or violated a local ordinance
27 substantially corresponding to section 218, 356, 356c, ~~or~~ 356d,

1 OR 356E of the Michigan penal code Act No 328 of the Public
2 Acts of 1931, being sections 750 218, 750 356, 750 356c ~~and~~
3 750 356d, AND 750 356E of the Michigan Compiled Laws, regardless
4 of the outcome of any criminal action

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

13 Section 2 This amendatory act shall not take effect unless
14 Senate Bill No 748 of the 87th Legislature is enacted into law