

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.2953 Retail fraud; liability; civil damages; demand for payment; text; noncompliance; effect of payment; jurisdiction; civil action against parent; formal police report; violation by merchant precluding recovery.

Sec. 2953.

(1) In addition to applicable penal sanctions, a person who commits an act for which he or she could be charged with retail fraud in the first, second, or third degree under sections 356c and 356d of the Michigan penal code, 1931 PA 328, MCL 750.356c and 750.356d, is liable to the merchant who is the victim of the act for the full retail price of unrecovered property or recovered property that is not in salable condition, and civil damages of 10 times the retail price of the property, but not less than \$50.00 and not more than \$200.00.

(2) The merchant who is the victim of retail fraud in the first, second, or third degree, or an agent of the merchant, may make a written demand for payment of the amount for which the person who committed the act is liable under subsection (1). Except for a sole proprietorship, a member of management, other than the initial detaining person, shall evaluate the validity of the accusation that the person committed the act and shall approve the accusation in writing before a written demand for payment is issued. The demand for payment may be delivered to the person from whom payment is demanded by first-class mail. The text of the written demand shall be as follows:

"We have cause to believe that on (date) you, or your minor child (child's name), committed retail fraud in the first, second, or third degree by (description of action and property involved) in our store or in its immediate vicinity.

State law authorizes us to demand in writing that you do all of the following, as applicable:

☐ Return the property in salable condition or pay to us \$ _____, which represents the full retail price or the remaining balance of the full retail price of the property.

☐ Pay to us \$ _____, which represents the full retail price of the recovered property that is not in salable condition.

☐ Pay to us civil damages in an amount equal to 10 times the retail price of the property involved, but not less than \$50.00 or more than \$200.00, equaling a total amount of \$ _____.

This notice is a formal demand for return of the property involved, if applicable, and the payment of the amounts indicated above, equaling a total amount of \$ _____. If you return any unrecovered property and pay the amounts indicated above to us within 30 days after the date this notice was mailed, we will not take any further civil action against you.

You are not required to respond to this demand if you believe that you or your minor child are not guilty of committing retail fraud or if you choose not to respond. If you fail to comply with this demand, we will be authorized by state law to bring a civil action against you to determine your legal responsibility for the return of any unrecovered property and the payment of the amounts indicated above plus the cost of the action, including reasonable attorney fees.

These civil proceedings do not prevent criminal prosecution for the alleged act of retail fraud."

(3) If the person to whom a written demand is made under subsection (2) complies with the written demand within 30 days after the date the written demand is mailed, that person shall incur no further civil liability to the merchant from the act of retail fraud.

(4) A person who commits an act described in subsection (1) and who fails to comply with a written demand under subsection (2) is liable to the merchant for the full retail price of the property, unless the property was recovered in salable condition, plus civil damages of 10 times the retail price of the property but not less than \$50.00 or more than \$200.00, and costs of the action, including reasonable attorney fees.

(5) If a civil action is filed pursuant to this section and before the trial of the action is commenced the person to whom a written demand was made under subsection (2) pays the merchant in cash the amount demanded, subsection (4) does not apply.

(6) An action under this section may be brought in the small claims division of the district court or in any other court of competent jurisdiction. If the amount demanded exceeds the jurisdiction of the small claims division, the action may still be brought in the small claims division, but the amount recovered shall not exceed the jurisdiction of the small claims division.

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

(8) A merchant may recover the amount for which a person is civilly liable under this section only if a formal police report is filed with a local law enforcement agency that has jurisdiction over the location where the violation

took place, which report sets forth facts alleging that the person has committed retail fraud in the first, second, or third degree or violated a local ordinance substantially corresponding to section 218, 356, 356c, or 356d of the Michigan penal code, 1931 PA 328, MCL 750.218, 750.356, 750.356c, and 750.356d, regardless of the outcome of any criminal action.

(9) Notwithstanding any other provision of this section, a merchant shall not recover civil damages for an act of retail fraud in the first, second, or third degree with regard to a particular item of property if the merchant violated section 3 of 1976 PA 449, MCL 445.353, with regard to that item of property and the violation was not caused by the person who committed the act of retail fraud.

History: Add. 1988, Act 50, Eff. June 1, 1988 ;-- Am. 1998, Act 313, Eff. Jan. 1, 1999