

COMMITTEE ON FINANCE  
SENATE AMENDMENTS TO H.B. 2090  
(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-1805, Arizona Revised Statutes, is amended to  
3 read:

4 13-1805. Shoplifting; detaining suspect; defense to wrongful  
5 detention; civil action by merchant; public  
6 services; classification

7 A. A person commits shoplifting if, while in an establishment in  
8 which merchandise is displayed for sale, the person knowingly obtains such  
9 goods of another with the intent to deprive that person of such goods by:

10 1. Removing any of the goods from the immediate display or from any  
11 other place within the establishment without paying the purchase price; or

12 2. Charging the purchase price of the goods to a fictitious person  
13 or any person without that person's authority; or

14 3. Paying less than the purchase price of the goods by some trick or  
15 artifice such as altering, removing, substituting or otherwise disfiguring  
16 any label, price tag or marking; or

17 4. Transferring the goods from one container to another; or

18 5. Concealment.

19 B. A person is presumed to have the necessary culpable mental state  
20 pursuant to subsection A of this section if the person does either of the  
21 following:

22 1. Knowingly conceals on himself or another person unpurchased  
23 merchandise of any mercantile establishment while within the mercantile  
24 establishment.

1           2. Uses an artifice, instrument, container, device or other article  
2 to facilitate the shoplifting.

3           C. A merchant, or a merchant's agent or employee, with reasonable  
4 cause, may detain on the premises in a reasonable manner and for a  
5 reasonable time any person who is suspected of shoplifting as prescribed in  
6 subsection A of this section for questioning or summoning a law enforcement  
7 officer.

8           D. Reasonable cause is a defense to a civil or criminal action  
9 against a peace officer, a merchant or an agent or employee of the merchant  
10 for false arrest, false or unlawful imprisonment or wrongful detention.

11           E. If a minor engages in conduct that violates subsection A of this  
12 section, notwithstanding the fact that the minor may not be held  
13 responsible because of the person's minority, any merchant who is injured  
14 by the shoplifting of the minor may bring a civil action against the parent  
15 or legal guardian of the minor under either section 12-661 or 12-692.

16           F. Any merchant who is injured by the shoplifting of an adult or  
17 emancipated minor in violation of subsection A of this section may bring a  
18 civil action against the adult or emancipated minor pursuant to section  
19 12-691.

20           G. NOTWITHSTANDING ANY OTHER LAW, THIS SECTION DOES NOT PRECLUDE A  
21 MERCHANT FROM DOING ANY OF THE FOLLOWING, INCLUDING WHILE A PERSON WHO IS  
22 SUSPECTED OF VIOLATING SUBSECTION A OF THIS SECTION IS DETAINED BY THE  
23 MERCHANT:

24           1. OFFERING A PERSON WHO IS SUSPECTED OF VIOLATING SUBSECTION A OF  
25 THIS SECTION AN OPPORTUNITY TO COMPLETE A PRECOMPLAINT EDUCATION PROGRAM IN  
26 LIEU OF MAKING OR FILING A REPORT OF THEFT WITH A LAW ENFORCEMENT AGENCY.

27           2. INFORMING THE PERSON OF RELEVANT CRIMINAL AND CIVIL REMEDIES THAT  
28 ARE AVAILABLE TO THIS STATE AND THE MERCHANT WITHOUT THE USE OF FORCE OR  
29 UNLAWFUL INTIMIDATION.

30           3. REDUCING OR WAIVING THE FEE FOR THE PRECOMPLAINT EDUCATION  
31 PROGRAM BASED ON THE PERSON'S ABILITY TO PAY.

32           H. A MERCHANT WHO OFFERS PRECOMPLAINT EDUCATION PROGRAMS:

1           1. MAY NOT RECEIVE REMUNERATION FROM AN EDUCATIONAL PROVIDER OR A  
2 PERSON SUSPECTED OF VIOLATING SUBSECTION A OF THIS SECTION FOR OFFERING A  
3 PRECOMPLAINT EDUCATION PROGRAM. A MERCHANT WHO OFFERS A PRECOMPLAINT  
4 EDUCATION PROGRAM SHALL PROVIDE THE PROGRAM THROUGH AN INDEPENDENT THIRD  
5 PARTY.

6           2. MAY NOT OFFER THE PROGRAM. TO A PERSON WHO THE MERCHANT KNOWS HAS  
7 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A OF THIS SECTION OR  
8 WAS PREVIOUSLY OFFERED AN OPPORTUNITY TO PARTICIPATE IN A PRECOMPLAINT  
9 EDUCATION PROGRAM.

10          3. SHALL PROVIDE, AT THE TIME THE PROGRAM IS OFFERED TO A PERSON  
11 SUSPECTED OF VIOLATING SUBSECTION A OF THIS SECTION, THE TERMS OF THE  
12 PROGRAM IN WRITING, INCLUDING WHAT ACTIONS ARE REQUIRED TO COMPLETE THE  
13 COURSE, THE TIMEFRAME IN WHICH THE COURSE MUST BE COMPLETED, THE PAYMENT  
14 OPTIONS AND A POINT OF CONTACT FOR THE PROGRAM.

15          4. MAY NOT RESCIND AN OFFER TO A PERSON TO PARTICIPATE IN THE  
16 PRECOMPLAINT EDUCATION PROGRAM IF THE PERSON PARTICIPATING IN THE PROGRAM  
17 IS MEETING THE TERMS OF THE AGREEMENT.

18          5. MAY NOT SEEK PROSECUTION AGAINST A PERSON SUSPECTED OF VIOLATING  
19 SUBSECTION A OF THIS SECTION IF THE PERSON SUSPECTED OF THAT VIOLATION HAS  
20 SUCCESSFULLY COMPLETED A PRECOMPLAINT EDUCATION PROGRAM IN CONNECTION WITH  
21 THAT INCIDENT.

22          6. SHALL PROVIDE OR REQUIRE THE INDEPENDENT EDUCATIONAL PROVIDER TO  
23 PROVIDE TO ALL LOCAL LAW ENFORCEMENT AGENCIES AND THE COUNTY OR MUNICIPAL  
24 ATTORNEY IN THE JURISDICTION WRITTEN NOTICE THAT THE MERCHANT IS OFFERING A  
25 PRECOMPLAINT EDUCATION PROGRAM BEFORE IMPLEMENTING THE PROGRAM.

26          7. SHALL COORDINATE WITH LOCAL LAW ENFORCEMENT AND PROSECUTORS AND  
27 ON REQUEST PROVIDE INFORMATION REGARDING THE PRECOMPLAINT EDUCATION  
28 PROGRAM, INCLUDING CRITERIA FOR PARTICIPATION AND COURSE CONTENT. ANY  
29 INFORMATION RECEIVED BY LAW ENFORCEMENT AND PROSECUTORS IS CONFIDENTIAL  
30 BUSINESS INFORMATION AND IS NOT A PUBLIC RECORD, EXCEPT THAT THE  
31 INFORMATION MAY BE USED FOR OFFICIAL PURPOSES BY A PUBLIC ENTITY, INCLUDING  
32 FOR THE ARREST AND PROSECUTION OF INDIVIDUALS.

1           8. SHALL FACILITATE DATA SHARING WITH LAW ENFORCEMENT TO ASSIST THE  
2 INVESTIGATION AND PROSECUTION OF CRIMINAL ACTIVITY.

3           9. SHALL OFFER ANY PERSON WHO QUALIFIES FOR THE PRECOMPLAINT  
4 EDUCATION PROGRAM AN OPPORTUNITY TO PARTICIPATE REGARDLESS OF AGE, GENDER,  
5 DISABILTY, RACE, COLOR OR RELIGION. A PERSON WHO IS BELOW TWO HUNDRED  
6 PERCENT OF THE FEDERAL POVERTY GUIDELINES MAY BE OFFERED AN OPPORTUNITY TO  
7 HAVE THE PROGRAM FEE REDUCED OR WAIVED.

8           10. SHALL ON REQUEST PROVIDE IDENTIFYING INFORMATION TO LAW  
9 ENFORCEMENT AND PROSECUTORS FOR ALL PERSONS WHO HAVE:

10           (a) BEEN DETAINED BY THE MERCHANT ON SUSPICION OF VIOLATING  
11 SUBSECTION A OF THIS SECTION.

12           (b) BEEN OFFERED PARTICIPATION IN THE PROGRAM.

13           (c) CONSENTED TO PARTICIPATE IN THE PROGRAM.

14           (d) COMPLETED THE PROGRAM.

15           (e) FAILED TO COMPLETE THE PROGRAM.

16           ~~H.~~ I. In imposing sentence on a person who is convicted of violating  
17 this section, the court may require any person to perform public services  
18 designated by the court in addition to or in lieu of any fine that the  
19 court might impose.

20           J. A MERCHANT MAY NOT SEEK REMEDY UNDER 12-691 OR 13-3981 FOR AN  
21 OFFENSE FOR WHICH THE SUSPECT AGREES TO PARTICIPATE IN AND COMPLETES A  
22 PRECOMPLAINT DIVERSION PROGRAM.

23           ~~H.~~ K. Shoplifting property with a value of two thousand dollars or  
24 more, shoplifting property during any continuing criminal episode or  
25 shoplifting property if done to promote, further or assist any criminal  
26 street gang or criminal syndicate is a class 5 felony. Shoplifting  
27 property with a value of one thousand dollars or more but less than two  
28 thousand dollars is a class 6 felony. Shoplifting property valued at less  
29 than one thousand dollars is a class 1 misdemeanor, unless the property is  
30 a firearm in which case the shoplifting is a class 6 felony. For the  
31 purposes of this subsection, "continuing criminal episode" means theft of  
32 property with a value of one thousand five hundred dollars or more if

1 committed during at least three separate incidences within a period of  
2 ninety consecutive days.

3 ~~+~~ L. A person who in the course of shoplifting uses an artifice,  
4 instrument, container, device or other article with the intent to  
5 facilitate shoplifting or who commits shoplifting and who has previously  
6 committed or been convicted within the past five years of two or more  
7 offenses involving burglary, shoplifting, robbery, organized retail theft  
8 or theft is guilty of a class 4 felony.”

9 Amend title to conform

2090FIN  
03/21/2018  
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