# STATE OF NEW YORK

3174

2017-2018 Regular Sessions

# IN ASSEMBLY

January 27, 2017

Introduced by M. of A. SEPULVEDA, RAIA, STECK -- Multi-Sponsored by -- M. of A. COOK, GARBARINO -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to larceny in mercantile establishments

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Section 11-105 of the general obligations law, as added by chapter 724 of the laws of 1991, is amended to read as follows:

§ 11-105. Larceny in mercantile establishments. 1. When used in this section, the term "mercantile establishment" shall mean a place or vehicle where goods, wares or merchandise are offered for sale or a place or vehicle from which deliveries of goods, wares or merchandise are made.

2. When used in this section, the term "larceny" is an act heretofore defined or known as common law larceny by trespassory taking as defined in paragraph (a) of subdivision two of section 155.05 of the penal law committed against the property of a mercantile establishment.

**2-a. When used in this section, the term "actual sales price" shall mean the price of the merchandise offered for sale to the public at the specific place, on the specific day and at the specific time of the alleged larceny.**

3. When used in this section, the term "emancipated minor" shall mean a person who was over the age of sixteen at the time of the alleged larceny and who was no longer a dependent of or in the custody of a parent or legal guardian.

4. In any proceeding brought under this section the burden of proof shall be by a preponderance of the evidence.

5. An adult or emancipated minor who commits larceny against the property of a mercantile establishment shall be civilly liable to the operator of such establishment in an amount consisting of:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(a) the [~~retail~~] **actual sales** price of the merchandise **offered for sale to the general public at the time of such alleged larceny** if **such merchandise is** not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus

(b) a penalty not to exceed the greater of [~~five~~] **two** times the [~~retail~~] **actual sales** price of the merchandise or [~~seventy-five~~] **fifty** dollars; provided, however, that in no event shall such penalty exceed five hundred dollars.

6. Parents or legal guardians of an unemancipated minor shall be civilly liable for said minor who commits larceny against the property of a mercantile establishment to the operator of such establishment in an amount consisting of:

(a) the [~~retail~~] **actual sales** price of the merchandise **offered for sale to the general public at the time of such alleged larceny** if **such merchandise is** not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus

(b) a penalty not to exceed the greater of [~~five~~] **two** times the [~~retail~~] **actual sales** price of the merchandise or [~~seventy-five~~] **fifty** dollars; provided, however, that in no event shall such penalty exceed five hundred dollars.

7. A conviction or a plea of guilty for committing larceny is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this section.

8. The fact that an operator of a mercantile establishment may bring an action against an individual as provided in this section shall not limit the right of such merchant to [~~demand, orally or~~] **ask** in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties prior to the commencement of any legal action.

9. In any action brought under subdivision six of this section, the court shall consider in the interest of justice mitigating circumstances that bear directly upon the actions of the parent or legal guardian in supervising the unemancipated minor who committed the larceny.

10. An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction.

11. The provisions of this section shall not be construed to prohibit or limit any other cause of action which an operator of a mercantile establishment may have against a person who unlawfully takes merchandise from the mercantile establishment.

12. Any testimony or statements of the defendant or unemancipated minor child of the defendant or any evidence derived from an attempt to reach a civil settlement or from a civil proceeding brought under this section shall be inadmissible in any other court proceeding relating to such larceny.

§ 2. This act shall take effect immediately.