

# STATE OF NEW YORK

1744

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed 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:

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

3 § 11-105. Larceny in mercantile establishments. 1. When used in this  
4 section, the term "mercantile establishment" shall mean a place or vehi-  
5 cle where goods, wares or merchandise are offered for sale or a place or  
6 vehicle from which deliveries of goods, wares or merchandise are made.

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

11 2-a. When used in this section, the term "actual sales price" shall  
12 mean the price of the merchandise offered for sale to the public at the  
13 specific place, on the specific day and at the specific time of the  
14 alleged larceny.

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

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

21 5. An adult or emancipated minor who commits larceny against the prop-  
22 erty of a mercantile establishment shall be civilly liable to the opera-  
23 tor of such establishment in an amount consisting of:

24 (a) the ~~[retail]~~ actual sales price of the merchandise offered for  
25 sale to the general public at the time of such alleged larceny if such

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

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1 merchandise is not recovered in merchantable condition up to an amount  
2 not to exceed fifteen hundred dollars; plus

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

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

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

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

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

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

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

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

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

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

43 § 2. This act shall take effect immediately.