
HOUSE BILL 2827

State of Washington

53rd Legislature

1994 Regular Session

By Representatives Wineberry, Heavey, Foreman, Veloria, Caver, Brough and J. Kohl

Read first time 01/24/94. Referred to Committee on Judiciary.

1 AN ACT Relating to use of force against shoplifters; amending RCW
2 4.24.230; adding a new section to chapter 9A.16 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.16 RCW
6 to read as follows:

7 It is the policy of this state to protect human life. While
8 employees and private security officers employed by mercantile
9 establishments have a lawful right to detain or apprehend persons who
10 reasonably are suspected of theft or shoplifting, the use of force in
11 those circumstances is unlawful if it is not reasonable or moderate
12 under all the facts and circumstances. In no case may force be used
13 when the property at issue has a retail value under five dollars.

14 A trier of fact may, but is not required to, infer that the
15 following actions are unreasonable when used by employees and private
16 security officers employed by, or whose employer has a contractual
17 relationship with, a wholesale or retail store or other mercantile
18 establishment to detain or restrain persons suspected of theft or
19 shoplifting: (1) Interfering with a suspect's breathing; (2) striking

1 a suspect with a closed fist; (3) pulling a suspect's hair; (4) kicking
2 a suspect while he or she is in a prone position; (5) placing fingers
3 or other objects in a suspect's eyes; (6) using or threatening to use
4 a firearm, a dangerous weapon defined in RCW 9.41.250, or other weapon,
5 instrument, or thing likely to produce bodily harm; (7) using or
6 threatening to use a "stun" or "tazor" gun; (8) using or threatening to
7 use an "aerosol tear gas device"; or (9) doing any other act that is
8 likely to cause and that does cause bodily harm greater than transient
9 pain or minor temporary marks. This list is illustrative of
10 unreasonable actions and is not intended to be exclusive.

11 Nothing in this section limits a person's right to use force on a
12 shoplifting or theft suspect when that force is otherwise lawful and
13 necessary for purposes of self-defense. Violation of this section
14 precludes the use of the statutory defense in RCW 9A.16.080 and
15 precludes imposition of a civil penalty under RCW 4.24.230.

16 **Sec. 2.** RCW 4.24.230 and 1987 c 353 s 1 are each amended to read
17 as follows:

18 (1) An adult or emancipated minor who takes possession of any
19 goods, wares, or merchandise displayed or offered for sale by any
20 wholesale or retail store or other mercantile establishment without the
21 consent of the owner or seller, and with the intention of converting
22 such goods, wares, or merchandise to his own use without having paid
23 the purchase price thereof shall be liable in addition to actual
24 damages, for a penalty to the owner or seller in the amount of the
25 retail value thereof not to exceed one thousand dollars, plus an
26 additional penalty of not less than one hundred dollars nor more than
27 two hundred dollars, plus all reasonable attorney's fees and court
28 costs expended by the owner or seller. A customer who orders a meal in
29 a restaurant or other eating establishment, receives at least a portion
30 thereof, and then leaves without paying, is subject to liability under
31 this section. A person who shall receive any food, money, credit,
32 lodging, or accommodation at any hotel, motel, boarding house, or
33 lodging house, and then leaves without paying the proprietor, manager,
34 or authorized employee thereof, is subject to liability under this
35 section.

36 (2) The parent or legal guardian having the custody of an
37 unemancipated minor who takes possession of any goods, wares, or
38 merchandise displayed or offered for sale by any wholesale or retail

1 store or other mercantile establishment without the consent of the
2 owner or seller and with the intention of converting such goods, wares,
3 or merchandise to his own use without having paid the purchase price
4 thereof, shall be liable as a penalty to the owner or seller for the
5 retail value of such goods, wares, or merchandise not to exceed five
6 hundred dollars plus an additional penalty of not less than one hundred
7 dollars nor more than two hundred dollars, plus all reasonable
8 attorney's fees and court costs expended by the owner or seller. The
9 parent or legal guardian having the custody of an unemancipated minor,
10 who orders a meal in a restaurant or other eating establishment,
11 receives at least a portion thereof, and then leaves without paying, is
12 subject to liability under this section. The parent or legal guardian
13 having the custody of an unemancipated minor, who receives any food,
14 money, credit, lodging, or accommodation at any hotel, motel, boarding
15 house, or lodging house, and then leaves without paying the proprietor,
16 manager, or authorized employee thereof, is subject to liability under
17 this section. For the purposes of this subsection, liability shall not
18 be imposed upon any governmental entity, private agency, or foster
19 parent assigned responsibility for the minor child pursuant to court
20 order or action of the department of social and health services.

21 (3) Judgments, but not claims, arising under this section may be
22 assigned.

23 (4) A conviction for violation of chapter 9A.56 RCW (~~or~~ RCW
24 9.45.040)) shall not be a condition precedent to maintenance of a civil
25 action authorized by this section.

26 (5) An owner or seller demanding payment of a penalty under
27 subsection (1) or (2) of this section shall give written notice to the
28 person or persons from whom the penalty is sought. The notice shall
29 state:

30 "IMPORTANT NOTICE: The payment of any penalty demanded of you does
31 not prevent criminal prosecution under a related criminal provision."

32 This notice shall be boldly and conspicuously displayed, in at
33 least the same size type as is used in the demand, and shall be sent
34 with the demand for payment of a penalty described in subsection (1)
35 (~~of~~ ~~or~~) or (2) of this section.

36 (6) The unreasonable use of force to detain or apprehend a person
37 suspected of theft, conversion, or shoplifting in violation of RCW
38 9A.16.110, is a bar to the recovery of any of the civil penalties set
39 out in this section. The suspect's conviction for violation of chapter

1 9A.56 RCW or an equivalent local ordinance has no relevance to whether
2 recovery of the civil penalty is barred due to unreasonable force. A
3 conviction for assault or homicide or unlawful imprisonment or any
4 other offense under Title 9 or 9A RCW is not a condition precedent to
5 barring recovery of a penalty because of unreasonable force.

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