

## **CHAPTER 51-21 RETAIL THEFT ACT**

### **51-21-01. Definitions.**

As used in this chapter, unless the context requires otherwise:

1. An item is "concealed" within the meaning of this chapter if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.
2. "Full retail value" means the merchant's stated or advertised price of the merchandise.
3. "Merchandise" means any item of tangible personal property and specifically includes shopping carts.
4. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchisee, or independent contractor or such owner or operator.
5. "Person" means any natural person or individual.
6. "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common-use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant, for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.
7. "Retail mercantile establishment" means any place where merchandise is displayed, held, offered, or stored for sale to the public.
8. "Shopping cart" means those pushcarts of the type or types which are commonly provided by grocery stores, drugstores, or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

### **51-21-02. Presumption.**

Any person concealing upon that person's person or among that person's belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered, or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.

### **51-21-03. Detention of suspect - Procedure.**

Any peace officer or merchant who reasonably believes that a person has committed, or is in the process of committing, theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

1. To require the person to identify oneself.
2. To verify such identification.
3. To determine whether such person has in the person's possession unpurchased merchandise and, if so, to recover such merchandise.
4. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer.
5. In the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed.

### **51-21-04. Civil and criminal immunity for acts of detention.**

Any peace officer or merchant who detains any person as permitted under section 51-21-03 may not be held civilly or criminally liable for any claim for relief allegedly arising from such detention.

**51-21-05. Civil remedy against adult shoplifters or the parent of a minor shoplifter.**

1. An adult who commits the offense of theft from a merchant is civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of the civil action, and reasonable attorney's fees.
2. The parent or legal guardian of an unemancipated minor who while living with the parent or legal guardian commits the offense of theft from a merchant is civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of the civil action, and reasonable attorney's fees. If the merchant knows or reasonably should know that the individual believed to have committed theft is a minor, the merchant may not request that the individual sign an admission of theft or other similar declaration unless the minor's parent, guardian, or attorney is present. An admission in violation of this subsection is not valid and is inadmissible in a civil or criminal action.
3. A conviction or plea of guilty for the theft is not a prerequisite to the bringing of a civil action under this section. However, if a criminal theft charge is filed against the individual, the merchant may not pursue civil damages until completion of the criminal action.
4. A parent or legal guardian of an unemancipated minor is not civilly liable under this section if it is determined by the court that one of the principal rationales for the shoplifting was a desire on the part of the minor to cause the minor's parent or legal guardian to be liable under this section.