

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

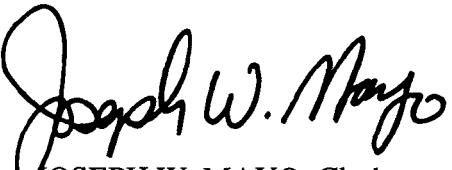
No. 479

H.P. 359

House of Representatives, February 9, 1995

**An Act to Provide Merchants Greater Recourse to Combat Deceptive and
Illegal Practices.**

Received by the Clerk of the House on February 7, 1995. Referred to the Committee on
Judiciary and ordered printed pursuant to Joint Rule 14.


JOSEPH W. MAYO, Clerk

Presented by Representative BUCK of Yarmouth.
Cosponsored by Representatives: BUNKER of Kossuth Township, CROSS of
Dover-Foxcroft, DiPIETRO of South Portland, HARTNETT of Freeport, JOYCE of
Biddeford, MURPHY of Berwick, POVICH of Ellsworth, SIROIS of Caribou, Senators:
HARRIMAN of Cumberland, STEVENS of Androscoggin.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 9-B MRSA §427, sub-§14** is enacted to read:

6 14. New checking accounts. Whenever a new checking account
8 is established with a financial institution, the financial
10 institution shall begin the check numbers at 1.

12 **Sec. 2. 14 MRSA §6071, sub-§2**, as amended by PL 1989, c. 502,
14 Pt. D, §8, is further amended to read:

16 **2. Failure to make restitution.** If a judgment is made
18 against a maker, issuer or drawer pursuant to subsection 1,
20 paragraphs A and B and that person fails to make restitution on
22 the date of judgment, the maker, issuer or drawer shall pay to
the holder interest at the rate of 12% per annum from the date of
dishonor and ~~collection costs not to exceed \$40 or the face
amount of the check, whichever is less~~ additional damages, as
determined by the court, but in no event may the amount of such
damages be less than \$100 or more than \$500. In the event of
court action, the court may award reasonable attorney's fees to
the prevailing party.

24 **Sec. 3. 14 MRSA §6072, sub-§1**, as enacted by PL 1989, c. 357,
26 is amended to read:

28 **1. Satisfaction of claim.** Subsequent to the commencement
30 of the action but prior to the hearing, the defendant may tender
32 to the plaintiff, as satisfaction of the claim, an amount of
34 money equal to the amount of the check, draft or order; a
reasonable handling fee; accrued interest; processing charges;
collection costs equal to the face amount of the check, draft or
order not to exceed \$40 \$100; and the incurred court and service
costs.

36 **Sec. 4. 14 MRSA §6073, sub-§§3 and 4**, as enacted by PL 1989, c.
38 357, are amended to read:

40 3. Processing charges; and

42 4. Interest; and

44 **Sec. 5. 14 MRSA §6073, sub-§5** is enacted to read:

46 5. Additional damages of not less than \$100 or more than
48 \$500.

Sec. 6. 14 MRSA c. 749 is enacted to read:

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CHAPTER 749

CIVIL RECOVERY FOR RETAIL THEFT

§8301. Short title

This chapter may be known and cited as the "Maine Civil Recovery for Retail Theft Act."

§8302. Civil recovery

1. Liability. Any person who unlawfully takes or attempts to take merchandise from a merchant is liable to the merchant in accordance with provisions of this chapter.

2. No limitation. The provisions of this chapter may not be construed to prohibit or limit any other cause of action that a merchant may have against a person who unlawfully takes merchandise from the merchant.

3. Civil recovery. Any person who unlawfully takes or attempts to take merchandise from a merchant is civilly liable to the merchant in an amount consisting of:

A. Damages equal to the retail price of the merchandise if the item is not returned in a merchantable condition; and

B. A civil penalty of up to 10 times the retail price of the merchandise, but not less than \$100 or more than \$500.

4. Written demand. The fact that an action may be brought against an individual as provided in this chapter does not limit the right of a merchant to make a written demand that a person who is liable for damages and penalties under this chapter remit the damages and penalties prior to the commencement of any legal action.

A. If a person to whom demand is made complies with the demand, that person incurs no further civil liability for that specific act of retail theft.

B. Any demand under this section must be accompanied by a copy of this chapter.

5. Criminal prosecution. A criminal prosecution under Title 17-A, chapter 15 is not a prerequisite to an action under this chapter and such a criminal prosecution does not bar civil action. An action under this chapter does not bar a criminal prosecution under Title 17-A, chapter 15.

2 6. Failure to prosecute. If a merchant files suit to
3 recover damages and penalties pursuant to this chapter, and the
4 merchant fails to appear at a hearing in such proceedings without
5 excuse from the court, the court shall dismiss the suit without
6 prejudice and award costs to the defendant.

7 7. Fraudulent prosecution. Any person who knowingly uses
8 provisions of this chapter to demand or extract money from a
9 person who is not legally obligated to pay a penalty may be
10 punished by a fine of not more than \$1,000 or by imprisonment for
11 not more than one year or by both.

14 STATEMENT OF FACT

16 This bill gives merchants greater civil recourse against
17 shoplifters and passers of bad checks.

18 This bill requires financial institutions to issue checks
19 starting at number 1 for all new checking accounts. This
20 provision is designed to remove the sometimes false impression
21 that checks of a high number indicate a long-established checking
22 account and to allow merchants to take precautions that ensure
23 proper identification and credit worthiness.

26 This bill increases the civil penalties for passers of bad
27 checks. An additional penalty between \$100 and \$500 may be
28 imposed against the maker, issuer or drawer of a bad check in 2
29 instances:

30 1. If satisfaction of the claim is not made within 10 days
31 of the commencement of the action; or

34 2. If restitution is not made on the date of judgment.

36 This bill also provides for civil recovery against
37 shoplifters. A merchant may seek damages between \$100 and \$500
38 as part of a civil action to recover the shoplifted merchandise
or its value. Criminal prosecution remains available.