

**943.50 Retail theft. (1) In this section:**

**(a) “Merchant” includes any “merchant” as defined in s.**

402.104 (3) or any innkeeper, motelkeeper or hotelkeeper.

(ar) “Theft detection device” means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(as) “Theft detection device remover” means any tool or device used, designed for use or primarily intended for use in removing a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(at) “Theft detection shielding device” means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(b) “Value of merchandise” means:

1. For property of the merchant, the value of the property; or
2. For merchandise held for resale, the merchant’s stated price of the merchandise or, in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the merchant’s stated price, the difference between the merchant’s stated price of the merchandise and the altered price.

**(1m)** A person may be penalized as provided in sub. (4) if he or she does any of the following without the merchant’s consent

and with intent to deprive the merchant permanently of possession or the full purchase price of the merchandise or property:

(a) Intentionally alters indicia of price or value of merchandise held for resale by a merchant or property of a merchant.

(b) Intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant.

© Intentionally transfers merchandise held for resale by a merchant or property of a merchant.

(d) Intentionally conceals merchandise held for resale by a merchant or property of a merchant.

(e) Intentionally retains possession of merchandise held for resale by a merchant or property of a merchant.

(f) While anywhere in the merchant’s store, intentionally removes a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(g) Uses, or possesses with intent to use, a theft detection shielding device to shield merchandise held for resale by a merchant or property of merchant from being detected by an electronic or magnetic theft alarm sensor.

(h) Uses, or possesses with intent to use, a theft detection device remover to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

**(3)** A merchant, a merchant’s adult employee or a merchant’s security agent who has reasonable cause for believing that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to

deliver the person to a peace officer, or to his or her parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but he or she shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person.

The merchant, merchant's adult employee or merchant's security agent may release the detained person before the arrival of a peace officer or parent or guardian. Any merchant, merchant's adult employee or merchant's security agent who acts in good faith in any act authorized under this section is immune from civil or criminal liability for those acts.

**(3m)** (a) In any action or proceeding for violation of this section, duly identified and authenticated photographs of merchandise which was the subject of the violation may be used as evidence in lieu of producing the merchandise.

(b) A merchant or merchant's adult employee is privileged to defend property as prescribed in s. 939.49.

**(4)** Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the merchandise does not exceed \$2,500.

(bf) A Class I felony, if the value of the merchandise exceeds \$2,500 but does not exceed \$5,000.

(bm) A Class H felony, if the value of the merchandise exceeds \$5,000 but does not exceed \$10,000.

© A Class G felony, if the value of the merchandise exceeds \$10,000.

**(5)** (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20.

(b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093.

© If the court orders restitution under pars. (a) and (b), any amount of restitution paid to the victim under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the other paragraph.

Sub. (3) requires only that the merchant's employee have probable cause to believe that the person violated this section in the employee's presence; actual theft need not be committed in the employee's presence. *State v. Lee*, 157 Wis. 2d 126, 458 N.W.2d

562 (Ct. App. 1990).

Reasonableness under sub. (3) requires: 1) reasonable cause to believe that the person violated this section; 2) that the manner of the detention and the actions taken in an attempt to detain must be reasonable; and 3) that the length of the detention and the actions taken in an attempt to detain must be reasonable. An attempt to detain may include pursuit, including reasonable pursuit off the merchant's premises.

### **943.51 Retail theft; civil liability. (1) Any person who**

incurs injury to his or her business or property as a result of a violation of s. 943.50 may bring a civil action against any individual who caused the loss for all of the following:

**(a) The retail value of the merchandise unless it is**

**returned undamaged and unused. A person may recover under this paragraph**

only if he or she exercises due diligence in demanding the return of the merchandise immediately after he or she discovers the loss and the identity of the person who has the merchandise.

**(b) Any actual damages not covered under par. (a).**

**(2) In addition to sub. (1), if the person who incurs the loss prevails, the judgment in the action may grant any of the following:**

**(a) 1. Except as provided in subd. 1m., exemplary damages of**

not more than 3 times the amount under sub. (1).

1m. If the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor, the exemplary damages may not exceed 2 times the amount under sub. (1).

2. No additional proof is required for an award of exemplary damages under this paragraph.

**(b) Notwithstanding the limitations of s. 799.25 or 814.04, all**

actual costs of the action, including reasonable attorney fees.

**(3) Notwithstanding sub. (2) and except as provided in sub.**

(3m), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$500.

**(3m)** Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300 if the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor.

**(3r)** Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20.

**(4) The plaintiff has the burden of proving by a preponderance**

of the evidence that a violation occurred under s. 943.50. A conviction under s. 943.50 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

**(5) A person is not criminally liable under s. 943.30 for any** civil action brought in good faith under this section.

**(6) Nothing in this section precludes a plaintiff from bringing**

the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

**History:** 1985 a. 179; 1989 a. 31; 1993 a. 71; 1995 a. 77.

Employee salary for time spent processing retail theft is compensable as “actual damages” under sub. (1) (b). Shopko Stores, Inc. v. Kujak, 147 Wis. 2d 589, 433

N.W.2d 618 (Ct. App. 1988).