

HOUSE BILL NO. 327

Introduced: 01/18/83

Referred to Committee on Judiciary: 01/18/83

Hearing: 1/28/83

Report: 01/31/83, Do Pass, As Amended

2nd Reading: 02/02/83, Do Pass

3rd Reading: 02/04/83, Do Pass

Transmitted to Senate: 2/5/83

Referred to Committee on Judiciary: 02/05/83

Hearing: 2/9/83

Report: 02/23/83. Be Not Concurred In. Report Adopted.
Bill Killed

1 House BILL NO. 327
 2 INTRODUCED BY Bergene
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE RIGHTS OF
 5 AND RESTRICTIONS ON A MERCHANT DETAINING A SUSPECTED
 6 SHOPLIFTER; AMENDING SECTION 46-6-503, MCA."
 7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 9 Section 1. Section 46-6-503, MCA, is amended to read:
 10 "46-6-503. Restrictions on arrest by merchant --
 11 liability. (1) A merchant acting under 46-6-502 may stop and
 12 temporarily detain the suspected shoplifter. The merchant
 13 in such event:
 14 (a) shall promptly inform the person that the stop is
 15 for investigation of shoplifting and that upon completion of
 16 the investigation the person will be released or turned over
 17 to the custody of a peace officer;
 18 (b) may demand of the person his name and his present
 19 or last address, and may question the person in a reasonable
 20 manner for the purpose of ascertaining whether or not such
 21 person is guilty of shoplifting, and may request a voluntary
 22 statement from him;
 23 (c) may take into possession any merchandise for which
 24 the purchase price has not been paid and which is in the
 25 possession of the person or has been concealed from full

1 view; and
 2 (d) may place the person under arrest or request the
 3 person to remain on the premises until a peace officer
 4 arrives.
 5 (2) Any stop, detention, questioning, or recovery of
 6 merchandise under 46-6-502(3) and this section shall be done
 7 in a reasonable manner and for a reasonable period of time.
 8 ~~Unless evidence of concealment is obvious and apparent to~~
 9 ~~the merchant, 46-6-502 and this section shall not authorize~~
 10 ~~a search of the detained person other than a search of his~~
 11 ~~coat or other outer garments and any package, briefcase, or~~
 12 ~~other container, unless the search is done by a peace~~
 13 ~~officer under proper legal authority. After the purpose of~~
 14 ~~a stop has been accomplished or 30 minutes have elapsed,~~
 15 ~~whichever occurs first, the merchant shall allow the person~~
 16 ~~to go unless the person is arrested and turned over to the~~
 17 ~~custody of a police officer. A reasonable period of time~~
 18 ~~includes a period of time long enough to accomplish the~~
 19 ~~purposes of this section and includes any time spent,~~
 20 ~~following arrest of the person by a merchant, awaiting the~~
 21 ~~arrival of a law enforcement officer or a parent or guardian~~
 22 ~~of a minor, summoned by the merchant.~~
 23 (3) Such stop and temporary detention, with or without
 24 questioning or removal of merchandise, when done by a
 25 merchant in compliance with the law, shall not constitute an

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1 unlawful arrest or search. A merchant stopping, detaining,
2 or arresting a person on the belief that such person is
3 shoplifting is not liable for damages to such person unless
4 the merchant acts with malice, either actual or implied, or
5 contrary to the provisions of this law."

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 327
INTRODUCED BY BERGENE

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE RIGHTS OF
AND RESTRICTIONS ON A MERCHANT DETAINING A SUSPECTED
SHOPLIFTER; AMENDING SECTION 46-6-503, MCA; ~~AND PROVIDING AN~~
~~IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-6-503, MCA, is amended to read:

"46-6-503. Restrictions on arrest by merchant --
liability. (1) A merchant acting under 46-6-502 may stop and
temporarily detain the suspected shoplifter. The merchant
in such event:

(a) shall promptly inform the person that the stop is
for investigation of shoplifting and that upon completion of
the investigation the person will be released or turned over
to the custody of a peace officer;

(b) may demand of the person his name and his present
or last address; and ~~AND~~ any question the person in a
reasonable manner for the purpose of ascertaining whether or
not such person is guilty of shoplifting; ~~and may request a~~
~~voluntary statement from him;~~

(c) may take into possession any merchandise for which
the purchase price has not been paid and which is in the

possession of the person or has been concealed from full
view; and

(d) may place the person under arrest or request the
person to remain on the premises until a peace officer
arrives.

(2) Any stop, detention, questioning, or recovery of
merchandise under 46-6-502(3) and this section shall be done
in a reasonable manner and ~~for a reasonable period of time.~~
~~unless evidence of concealment is obvious and apparent to~~
~~the merchant; 46-6-502 and this section shall not authorize~~
~~a search of the detained person other than a search of his~~
~~coat or other outer garments and any package, briefcase, or~~
~~other container, unless the search is done by a peace~~
~~officer under proper legal authority. After the purpose of~~
~~a stop has been accomplished or 30 minutes have elapsed,~~
~~whichever occurs first, the merchant shall allow the person~~
~~to go unless the person is arrested and turned over to the~~
~~custody of a police officer. A reasonable period of time~~
~~includes a period of time long enough to accomplish the~~
~~purposes of this section and includes any time spent~~
~~following arrest of the person by a merchant, awaiting the~~
~~arrival of a law enforcement officer or a parent or guardian~~
~~of a minor, summoned by the merchant.~~

(3) Such stop and temporary detention, with or without
questioning or removal of merchandise, when done by a

1 merchant in compliance with the law, shall not constitute an
2 unlawful arrest or search. A merchant stopping, detaining,
3 or arresting a person on the belief that such person is
4 shoplifting is not liable for damages to such person unless
5 the merchant acts with malice, either actual or implied, or
6 contrary to the provisions of this law."

7 ~~SECTION 2. SEVERABILITY. IF A PART OF THIS ACT IS~~
8 ~~INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID~~
9 ~~PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN~~
10 ~~ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT~~
11 ~~IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE~~
12 ~~INVALID APPLICATIONS.~~

13 ~~SECTION 3. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~
14 ~~PASSAGE AND APPROVAL.~~

-End-

HOUSE BILL NO. 327

INTRODUCED BY BERGENE

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE RIGHTS OF AND RESTRICTIONS ON A MERCHANT DETAINING A SUSPECTED SHOPLIFTER; AMENDING SECTION 46-6-503, MCA; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-6-503, MCA, is amended to read:

"46-6-503. Restrictions on arrest by merchant -- liability. (1) A merchant acting under 46-6-502 may stop and temporarily detain the suspected shoplifter. The merchant in such event:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;

(b) may demand of the person his name and his present or last address; and ~~AND~~ may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting; ~~and may request a voluntary statement from him;~~

(c) may take into possession any merchandise for which the purchase price has not been paid and which is in the

possession of the person or has been concealed from full view; and

(d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

(2) Any stop, detention, questioning, or recovery of merchandise under 46-6-502(3) and this section shall be done in a reasonable manner and for a reasonable period of time. ~~Unless evidence of concealment is obvious and apparent to the merchant, 46-6-502 and this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, briefcase, or other container, unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer. A reasonable period of time includes a period of time long enough to accomplish the purposes of this section and includes any time spent following arrest of the person by a merchant, awaiting the arrival of a law enforcement officer or a parent or guardian of a minor, summoned by the merchant.~~

(3) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a

1 merchant in compliance with the law, shall not constitute an
2 unlawful arrest or search. A merchant stopping, detaining,
3 or arresting a person on the belief that such person is
4 shoplifting is not liable for damages to such person unless
5 the merchant acts with malice, either actual or implied, or
6 contrary to the provisions of this law."

7 SECTION 2. SEVERABILITY. IF A PART OF THIS ACT IS
8 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
9 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
10 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
11 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
12 INVALID APPLICATIONS.

13 SECTION 3. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
14 PASSAGE AND APPROVAL.

-End-