HENRY MCMASTER
ATTORNEY GENERAL

January 2, 2008

The Honorable Danny Verdin
Senator, District No. 9
P. O. Box 272
Laurens, South Carolina 29360

Dear Senator Verdin:

In a letter to this office you questioned whether merchants can simultaneously bring both civil and criminal charges against shoplifters. You specifically referenced the provisions of S.C. Code Ann. § 15-75-40 which provide for a civil action to be brought against shoplifters or custodial parents or legal guardians of an unemancipated minor who knew or should have known of the minor's tendency to steal. As set forth by such provision:

> (C) [a]n adult or emancipated minor who commits shoplifting against the property of a store or other retail mercantile establishment is civilly liable to the operator of the establishment in an amount...(as set forth)...
>
> (D) [c]ustodial parents or legal guardians of an unemancipated minor who knew or should have known of the minor's propensity to steal are civilly liable for the minor who commits shoplifting against the property of a store or other retail mercantile establishment to the operator of the establishment in an amount...(as set forth)....

Subsection (E) of such provision states that "[a] conviction or a plea of guilty for committing shoplifting is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this section." Also, subsection (F) states that

> [t]he fact that an operator of a store or other retail mercantile establishment may bring an action against an individual as provided in this section does not limit the right of the merchant to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties before the commencement of a legal action.

It is further provided by subsection (J) that

> [t]he provisions of this section may not be construed to prohibit or limit any other cause of action which an operator of a store or other retail mercantile establishment may have against a person who unlawfully takes merchandise from the establishment.

Subsection (L) states that

> [a] store which utilizes the provisions of this section is prohibited from subsequently filing criminal charges against the individual pursuant to Section 16-13-110...(the shoplifting offense statute)....(emphasis added).

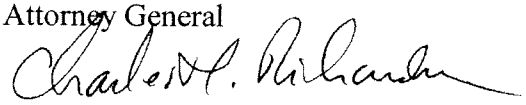
The term "subsequently filing criminal charges" is not further defined by the statute. As set forth in Reis v. Biggs Unified School District, 126 Cal.App.4th 809 at 820 (Cal.App.3Dist. 2005), the term "subsequent" is defined by the *Merriam-Webster Collegiate Dictionary* (10th ed. 2000) as "following in time, order, or place." The case of Bailey v. ANR Freight Systems, Inc., 1999 WL 33326908 (Mich. App. 1999) referenced that the term "subsequent" was defined by the *Random House Webster's College Dictionary* as "occurring or coming later or after." In State v. Dudoit, 978 P.2d 700, 711 (Hawaii, 1999), the term "subsequent", quoting *Black's Law Dictionary* (6th ed. 1990) is defined as "...following in time, coming or being later than something else; succeeding."

Consistent with such definitions, in the opinion of this office, a store which brings a civil action against a shoplifter pursuant to Section 15-75-40 would be prevented from then filing criminal charges arising from that same incident. As set forth, the term "subsequent" is defined as that which follows a former event, and, therefore, "subsequent" criminal charges would not be in order in such situation. However, in the opinion of this office, a merchant could bring both civil and criminal charges against a shoplifter consistent with such provision if the charges are brought simultaneously.

With kind regards, I am,

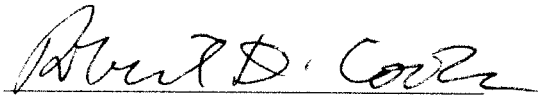
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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