

# **SALEM POLICE DEPARTMENT**

## **MERCHANTS GUIDE**

### **TO HANDLING**

### **SHOPLIFTING & RELATED OFFENSES**

REV. AUGUST 2022/AGF



## **FOR OUR TOWN MERCHANTS**

*Shoplifting and related theft offenses is a serious problem in the Town of Salem. The large number of retail locations coupled with easy highway access and proximity to the Massachusetts border make Salem an ideal target for both organized groups and individuals to attempt theft crimes within our Town. It is an issue the Salem Police Department is committed to confronting in partnership with the merchants and business owners of Salem.*

*This booklet is an updated guide that we started years ago. Since our last guide issued in 2016, the Salem Police Department has established a new General Order on the handling of retail crimes. We hope this guide serves as a useful reference in detailing your rights and the procedures of the Salem Police Department. Our goal is to decrease the criminal element engaged in these crimes through successful prosecution and prevention. Additionally, we are seeking an accurate accounting of property crimes within the Town through the voluntary reporting of merchants and business owners.*

*As always, the men and women of the Salem Police Department stand ready to assist you with any issues and questions you may have.*

*Thank you*

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## **RELEVANT STATUTES**

The following list of statutes pertain to shoplifting. These statutes are called RSA's and stand for Revised Statutes Annotated, which are used to define every crime in the State.

### **RSA 627:8-a Use of Force by Merchants. –**

I. A merchant, or his or her agent, is justified in detaining any person who he or she has reasonable grounds to believe has committed the offense of willful concealment, as defined by RSA 637:3-a, on his or her premises as long as necessary to surrender the person to a peace officer, provided such detention is conducted in a reasonable manner.

II. A motion picture theater owner, or his or her agent, is justified in detaining any person who he or she has reasonable grounds to believe has committed the offense of unauthorized recording in a motion picture theater on his or her premises, as defined by RSA 644:19, as long as necessary to surrender the person to a peace officer, provided such detention is conducted in a reasonable manner.

III. Notwithstanding RSA 594:10, a peace officer may arrest a person who has been detained pursuant to this section, without a warrant, if the peace officer has probable cause to believe that the person has committed the offense of willful concealment and if the merchant or his or her agent witnessed the offense or if the unlawfully obtained goods or merchandise of the store were recovered from the person.

**RSA 636:1 Robbery. –**

I. A person commits the offense of robbery if, in the course of committing a theft, he:

- (a) Uses physical force on the person of another and such person is aware of such force; or
- (b) Threatens another with or purposely puts him in fear of immediate use of physical force.

II. An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, in an effort to retain the stolen property immediately after its taking, or in immediate flight after the attempt or commission.

III. Robbery is a class B felony, except that if the defendant;

- (a) Was actually armed with a deadly weapon; or
- (b) Reasonably appeared to the victim to be armed with a deadly weapon; or
- (c) Inflicted or attempted to inflict death or serious injury on the person of another,

The offense is a class A felony, except that if the defendant was actually armed with a deadly weapon, and the deadly weapon was a firearm, he shall be sentenced in accordance with RSA 651:2, II

**RSA 637:3-a Willful Concealment. –**

I. A person is guilty of willful concealment if, without authority, he or she willfully conceals the goods or merchandise of any store while still upon the premises of such store. Goods or merchandise found concealed upon the person shall be prima facie evidence of willful concealment.

Notwithstanding RSA 637:11, willful concealment shall be a misdemeanor.

II. A person commits theft if, with the purpose to deprive a merchant of goods or merchandise, he or she knowingly:

(a) Removes goods or merchandise from the premises of a merchant;  
or

(b) Alters, transfers, or removes any price marking affixed to goods or merchandise;  
or

(c) Causes the cash register or other sales recording device to reflect less than the merchant's stated or advertised price for the goods or merchandise;  
or

(d) Transfers goods or merchandise from the container in which such goods or merchandise were intended to be sold to another container.

**RSA 637:10-a Use or Possession of Theft Detection Shielding Devices and Theft Detection Device Removers. –**

I. A person commits unlawful use of a theft detection shielding device when he or she engages in the following acts:

(a) Knowingly manufactures, sells, offers for sale, or distributes a laminated or coated bag or device specially designed, marketed, and intended to be used to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

(b) Knowingly possesses any laminated or coated bag or device

specially designed, marketed, and intended to be used to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit a theft.

II. A person commits unlawful possession of a theft detection device remover when he or she knowingly possesses any tool or device designed to allow the removal of any theft detection device from any merchandise, with the intent to use such tool to remove the detection device from the merchandise without the permission of the merchant or person owning or holding said merchandise.

III. Persons convicted of either the use or possession of theft detection shielding devices or theft detection device removers shall be guilty of a misdemeanor.

**RSA 637:10-b Fraudulent Retail Transactions. –**

I. A person shall be guilty of a misdemeanor if such person possesses, uses, transfers, manufactures, alters, counterfeits, or reproduces a retail sales receipt or universal product code label with the purpose to deprive a merchant of goods or merchandise.

II. A person shall be guilty of a class B felony if such person possesses, uses, transfers, manufactures, alters, counterfeits, or reproduces 5 or more retail sales receipts or universal product code labels, or any combination of 5 or more sales receipts or universal product code labels, or possesses a device designed or adapted to manufacture counterfeit retail sales receipts or universal product code labels with the purpose to deprive a merchant of goods or merchandise.

**RSA 637:10-c Organized Retail Crime Enterprise. –**

A person is guilty of a Class B felony, and a Class A felony for a second or subsequent offense, if he or she conspires with one or more persons to engage for profit in a scheme or course of conduct of theft as defined in RSA 637:3-a, II or RSA 637:10-b. A conviction under this section shall not merge with the conviction for any offense that is the object of the conspiracy.

**RSA 637:11 Penalties. –**

I. Theft constitutes a class A felony if:

- (a) The value of the property or services exceeds \$1,500, or
- (b) The property stolen is a firearm, or
- (c) The actor is armed with a deadly weapon at the time of the theft, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g

II. Theft constitutes a class B felony if:

- (a) The value of the property or services is more than \$1,000 but not more than \$1,500, or
- (b) The actor has been twice before convicted of theft of property or services, as a felony or class A misdemeanor, or
- (c) The theft constitutes a violation of RSA 637:5, II (a) or (b), or
- (d) The property or services stolen are from 3 separate business establishments within a 72-hour period, or
- (e) The property is stolen with intent to resell or distribute. It would be prima facie evidence that the offense constitutes theft with intent to resell or distribute when the theft consists of good or merchandise in quantities that would not normally be purchased for personal use or consumption, or



- (f) The property received in violation of RSA 637:7 consists of goods or merchandise in quantities that would not normally be purchased for personal use or consumption, or
- (g) The actor has twice before been convicted of offenses under RSA 637:3-a, II and the present and prior convictions were based on offenses committed within a 36-month period.

III. Theft constitutes a misdemeanor if the value of the property or services does not exceed \$1,000.

**RSA 638:5 Fraudulent Use of Credit Card. –**

I. A person is guilty of fraudulent use of a credit card if he uses a credit card for the purpose of obtaining property or services with knowledge that:

- (a) The card is stolen; or
- (b) The card has been revoked or cancelled; or
- (c) For any other reason his use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

II. "Credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

III. (a) Fraudulent use of a credit card is:

(1) A class A felony if:

(A) Property or services are obtained which exceed the value of \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate amount of the property or services obtained by the defendant as part of those offenses exceeds \$1,500;

(2) A class B felony if:

(A) Property or services are obtained which exceed the value of \$1,000 but are not more than the value of \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate amount of the property or services obtained by the defendant as part of those offenses exceeds \$1,000 but does not exceed \$1,500; and

(3) A misdemeanor in all other cases.

(b) The value shall be determined according to the provisions of RSA 637:2, V.

**RSA 638:28 Definitions. –**

In this subdivision:

I. "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

II. "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

III. "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

IV. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or

operator. A merchant includes a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing or receiving goods, services, money, or anything else of value from the person.

**RSA 638:29 Use of Scanning Device or Reencoder to Defraud Prohibited. –**

I. A person is guilty of the crime of using a scanning device or reencoder to defraud when the person knowingly:

- (a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant; or
- (b) Uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

II. Using a scanning device or reencoder to defraud is:

- (a) A class B felony if such person has one or more prior convictions in this state or another state for the conduct described in this section.
- (b) A class B felony if such person used a scanning device or reencoder to defraud 2 or more times in violation of this section.
- (c) A misdemeanor in all other cases.

(Source: New Hampshire Criminal Code Annotated 2021-2022)

## **CRIMINAL PROCEDURE**

In 'routine' cases where you detain an individual for theft, the Salem Police requires the merchant to complete several tasks prior to contacting the department for an officer to respond. The sole purpose of these tasks is to cut down on the amount of time a patrol officer is assigned to a shoplifting call. A 'routine' shoplifting call can tie up an officer for over two hours should a transport to the jail be required. It is important to remember that these tasks only apply to cases where the suspect(s) are compliant, where no assaults have taken place, and where they are not armed with a deadly weapon.

**NOTE – In any case where store employees or loss prevention employees come upon a shoplifter armed with a deadly weapon, they should call the Salem Police Department immediately. IF THAT WEAPON IS A FIREARM, EMPLOYEES ARE DISCOURAGED FROM CONFRONTING A SHOPLIFTER AT ALL UNTIL THE POLICE ARRIVE. Please use common sense in this area as a pocket knife, while under certain circumstances could be a deadly weapon, does not by itself warrant an immediate call if the subject is compliant and disarmed without incident. Weapons such as brass knuckles, machetes, slung-shot, black-jack, sword, or firearms that are in the possession of a compliant shoplifter still require an immediate call to the police department. Any theft of a firearm also requires an immediate call to the police department.**

### **Prior to calling the Salem Police (Routine incidents)**

- 1). Inventory all evidence seized from the shoplifter using forms provided by this agency.
- 2). Photograph the evidence in one image, if possible.

- 3). Complete an itemized list of what was stolen with prices and total amount.
- 4). Witness statements/ reports should be finished.

**Upon arrival of Salem Police:**

- 1). The officer will observe the property that was stolen.
- 2). The officer will take possession of the Inventory Sheet and photographic images, as well as a copy of video surveillance (if available at that time).

**Once decision to arrest is made:**

- 1). Property that has been recovered pursuant to a willful concealment charge from a merchant can be photographed and returned to the merchant for restocking into their inventory. A receipt of the items showing the price and SKU number should be obtained from the merchant for accurate reporting purposes. Property that has been recovered by the Salem Police Department or where the unique nature of the property is essential for its evidentiary value, should be seized and logged into evidence. Under no circumstance shall evidence seized by a Salem Police Officer be returned to a store if charges are pending.
- 2). The officer shall secure a written and signed statement before the end of the work day from all witnesses to the offense, documenting what they observed and any action taken.

**Failure to comply with these steps will result in the officer not responding or effecting an arrest unless the value of the property exceeds \$500.00.**

**Items of Note:**

- If the officer determines that probable cause does not exist, no enforcement action will be taken.

- Officers hold sole discretionary powers as to what enforcement action to take. Considerations that the officer may consider on whether to arrest or not include:
  - a. Age of the Offender
  - b. Value of the Merchandise: on any theft of under \$50.00 for a first time offender an arrest will not be made, barring other facts (e.g., additional charges) – However, any person 17 years of age or younger shall be arrested for Shoplifting by this agency.
- Premises: In *State v. Thiel* (N.H. 2010), the NH Supreme Court ruled that the term premises includes the entire structure of a business. It is not enough for a person to “pass all points of purchase” to meet the definition of theft under RSA 637:3-a, II. To meet the definition a person must leave the physical structure the business is housed in. So, any concealment of merchandise inside the store can only be charged as a Misdemeanor under paragraph I of RSA 637:3-a. Only when they leave the store with merchandise does the value of the merchandise and the defendant’s criminal record have any bearing on the matter. Please refrain from using language in statements and reports regarding “point of sale” or “point of purchase,” etc., as these areas do not have relevance in this State. If someone leaves a store into a general mall area, such as the Mall at Rockingham Park (MARP), they have left the premises. Remember, thefts under paragraph II can still occur inside the store if the suspect commits any act in defiance of subparagraphs (b), (c), and (d) of paragraph II of RSA 637:3-a. In those cases, you may detain the defendant immediately without them leaving the store. These are as follows:

- (b) Alters, transfers, or removes any price marking affixed to goods or merchandise; or**
- (c) Causes the cash register or other sales recording device to**

reflect less than the merchant's stated or advertised price for the goods or merchandise; or

(d) Transfers goods or merchandise from the container in which such goods or merchandise were intended to be sold to another container.

- *Always remember that the safety of your employees and the general public should be the first priority regarding any attempt at a detention.*

## **SALEM POLICE DEPARTMENT GENERAL ORDER**

### **# PP-6 RETAIL CRIMES**

#### **I. PURPOSE:**

The purpose of this general order is to provide responding officers with approved Department guidelines in dealing with retail crimes.

#### **II. POLICY:**

It shall be the policy of the Salem Police Department to assist local merchants in the deterrence and suppression of the retail crimes of Shoplifting, Willful Concealment, and Organized Retail Theft. Assistance may include education and guidance in civil recovery, arrest, and prosecution of offender, and/or education in various crime prevention techniques.

Officers shall maintain a full knowledge of all retail crime laws as addressed in RSA's 637:3-a, 637:10-a, 637:10-b, and 637:10-c.

#### **III. PROCEDURE:**

##### **A. CALL TAKER RESPONSIBILITIES**

1. Unless the caller specifically states that they do not want an officer to respond, and only wanted to make us aware, an officer will be dispatched.
2. Dispatch shall determine if the offender is posing any problem, is armed, or there is a risk of injury or assault. An appropriate response code and number of officers will be dispatched based on the information obtained.

##### **B. MERCHANT RESPONSIBILITIES**

1. Prior to calling the Salem Police Department, merchants shall inventory all evidence seized from the shoplifter using forms



provided by this agency.

2. Photograph all items stolen in one image, if possible.
3. Complete an itemized list of what was stolen with prices and total amount.
4. Witness statements/ reports should be finished.

#### C. RESPONDING OFFICER RESPONSIBILITIES

1. Upon arrival the officer shall conduct an investigation into the circumstances of the detainment/incident. At a minimum, this shall include an interview with all appropriate store employees and other witnesses. If further investigation requires the suspect(s) to be interviewed, they will be advised of their Constitutional Rights under the Miranda decision before proceeding.
2. In the absence of Probable Cause, no enforcement action on the part of the officer will take place.
3. Officers hold the sole discretionary powers as to what form of enforcement action they will take. The following guidelines may be used as an aid to determine what action will be taken:
  - a. Age of Offender; however, any person under the age of 18 shall be arrested.
  - b. Value of Merchandise: Keeping in mind Shoplifting/Willful Concealment where the value of the property exceeds \$1,500, or the property stolen is a firearm, or if the actor is armed with a deadly weapon, is a Class A Felony; the value of the property is more than \$1,000 but not more than \$1,500, or the actor has been twice before convicted of theft of property or services as a felony or Class A misdemeanor, or the actor has been

twice before convicted of a Theft under RSA 637:3-a, II (regardless of class) within a 36 month period, or the property is stolen with intent to resell or redistribute, or the property or services are stolen from 3 separate business establishments within a 72-hour period, is a Class B Felony; and if the value of the property does not exceed \$1,000 it is a Misdemeanor. Willful Concealment under paragraph I of the Willful Concealment statute, regardless of value, is a misdemeanor.

- c. Past History: Does the suspect have a history within the store, history with the Salem Police Department, prior convictions, active warrants, or is this truly a first offense?
  - d. Level of Sophistication: Novice v. Experienced Offender?
  - e. Did the suspect display resistant or combative behavior?
  - f. Demeanor/Attitude: Hostile or threatening behavior, indications of mental illness, intoxication, or drug impairment, evasive or untruthful answers, or repentant and cooperative.
  - g. Other Considerations: committed an additional act (i.e., carry a weapon, false ID); for officer liability concerns, injuries to suspect should be a strong factor in not taking the subject into custody.
4. Barring extraordinary circumstances, custodial arrests will take place for all felony level offenses.
  5. If in the course of committing a theft the suspect used physical force or threatened another or purposely put another in fear of the imminent use of force, the incident will be considered a Robbery under RSA 636:1, and an arrest will be made. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, in an effort to retain the stolen property immediately after its taking, or in immediate

flight after the attempt or commission.

6. If force was not used, the officer may make a warrantless arrest if any of the below conditions exist:
  - a. If the officer has probable cause to believe that the person has committed the offense of willful concealment and if the merchant or his or her agent witnessed the offense, or if the unlawfully obtained goods or merchandise of the store were recovered from the person as defined under RSA 627:8-a; Use of Force by Merchants.
  - b. The Suspect does not have adequate proof of identification or is from out of state and it's reasonably foreseeable that the suspect won't return for court.
  - c. There is evidence of multiple shoplifting or willful concealment incidents present not involving the same merchant.
  - d. The merchandise has not been recovered and you have probable cause to believe that it is concealed on the suspect.
  - e. The theft is a felony.
7. If none of the above-mentioned warrantless arrest scenarios are present, run a III and local records check on the suspect. Make an arrest if:
  - a. The suspect has any outstanding warrants, or
  - b. The suspect has two prior convictions for Class A misdemeanor or Felony level theft crimes.

**NOTE:** If a suspect has committed willful concealment under paragraph 637:3-a I (has not left the premises) but the case would warrant a more serious charge than a misdemeanor,

then it could be charged as an “attempted” theft as defined in RSA 629:1. Factors to consider might be the value of the item, prior convictions, and prior record. Any charge brought under 637:3-a II can also be elevated to a felony based on the value of the items stolen or in the case of stolen firearms.

8. If none of the conditions authorizing an immediate arrest listed above exist, the responding officer will:
  - a. Record all details concerning the suspect’s name, address, features, clothing description, vehicle information, telephone number, and employment information.
  - b. Advise the suspect they are free to leave.
  - c. Interview the suspect if they are willing to speak with you. Miranda is not necessary.
  - d. Advise them a warrant for their arrest will be forthcoming.
9. Interview the merchant in detail and take a written statement, if possible, otherwise provide the merchant with a witness statement form with instructions to complete it thoroughly, returned to the investigating officer within two (2) business days.
10. When the value of the theft is under \$50.00 for a first offender an arrest should not be made unless additional facts justify detainment, i.e., additional charges or prior shoplifting incidents.

#### D. EVIDENCE

1. Property that has been recovered pursuant to a willful concealment charge from a merchant can be photographed and returned to the merchant for restocking into their inventory. A receipt of the items showing the price and SKU

number should be obtained from the merchant for accurate reporting purposes.

2. Property that has been recovered by the Salem Police Department or where the unique nature of the property is essential for its evidentiary value, should be seized and logged into evidence. **Under no circumstance shall evidence seized by a Salem Police Officer be returned to a store if charges are pending.**

#### E. CHARGING

1. In determining which section of the statute to charge under, consider the following scenarios:
  - a. **Willful Concealment (RSA 637:3-a, I):** Suspect conceals item on their person while anywhere on the premises, i.e., putting item in pants, coat, purse, etc. while in the aisles, restroom, anywhere on the premises but is caught before leaving the store.
  - b. **Theft (formerly Shoplifting) (RSA 637:3-a, II):** Suspect leaves the premises with item, i.e., exits store completely and is stopped in parking lot or elsewhere with items, or isn't caught immediately but other evidence supports the charge (surveillance, witness statements).

The above is the most common scenario, but see statute for other conduct that is considered theft (i.e., switching price tags, transferring items to different containers, etc.)

**NOTE:** In *State of New Hampshire v. Thiel* (N.H. 2010), the NH Supreme Court ruled that the term premises includes the entire structure of a business. It is not enough for a person to “pass all points of purchase” to meet the definition of theft under RSA 637:3-1, II. To meet the definition a person must leave the physical structure the business is housed in. Any concealment of merchandise

inside a store can only be charged as a Misdemeanor under Paragraph I of 637:3-a. Only when a suspect leaves the store with the merchandise does the value of the merchandise and the defendant's criminal history have any bearing in the matter. If someone leaves a store into a general mall area, such as the Mall at Rockingham Park (MARP), they have left the premises. Thefts under Paragraph II of 637:3-a can still occur while on the premises if the suspect commits any act in defiance of subparagraphs (b), (c), and (d) of Paragraph II of RSA 637:3-a. In regard to premises, it may still be possible to charge an Attempted Theft by Unauthorized Taking for persons caught concealing items within the store as outlined below.

- c. **Attempted Theft (RSA 637:3 & 629:1):** Suspect attempts to leave store with item, either concealed or not, and passes all points of purchase/sale, but is caught before leaving the store (the classic "caught in the vestibule" situation).

An example of what the charging language for Attempted Theft by Unauthorized Taking would look like is the following: "With the purpose to commit the crime of Theft by Unauthorized Taking, did, under the circumstances he believed them to be, was an act constituting a substantial step toward the commission of the crime, to wit, the defendant did conceal \$2,000 worth of merchandise on his person and was caught attempting to leave the store".

- d. **Use or Possession of Theft Detection Shielding Devices and Theft Detection Device Removers (RSA 637:10-a):** There are two sections to this statute. The first deals with manufacturing or selling a laminated bag to defeat an electronic or magnetic theft alarm sensor or possessing such a device. The second section deals with possessing *any* tool with the purpose to remove a theft detection device.

An example of this would be a suspect using a knife to remove magnetic spider webbing from an electronic device.

- e. **Fraudulent Retail Transactions (RSA 637:10-b):** There are two sections to this statute. The first is when a suspect produces or possesses a false retail sales receipt or Universal Product Code (UPC) label with the purpose to deprive (Theft by Deception may also apply under RSA 637:4 if the act was completed). The second section is when a suspect produces or possesses 5 or more retail sales receipts or Universal Product Codes (UPC's) with the purpose to deprive and is a felony.
- f. **Organized Retail Crime Enterprise (RSA 637:10-c):** A person commits a felony if they conspire with one or more other persons to engage in a for profit scheme of Theft, as defined under Paragraph II of RSA 637:3-a. What is unique with this statute is the fact that any conviction under this statute *shall not merge* with any offense that is the object of the conspiracy. So, if a person is charged with a felony level theft under RSA 637:3-a, II, and this statute may be convicted of both.

## F. EDUCATION

1. In order to facilitate this process, the Salem Police Department will provide a copy of this policy to all merchants who maintain an organized effort to detect shoplifters. Merchants who infrequently seek police assistance in such cases will be educated by the responding officer of their own options and the position of the Salem Police Department.

## **CIVIL PROCEDURES FOR MERCHANTS**

**Notes About Civil Recovery:** Salem Police will not prosecute cases in which a merchant is pursuing civil recovery. If Salem Police make an arrest you must notify, in the report or statement, what losses the store has suffered so that the prosecutor knows to seek restitution in the criminal case. Merchants may only seek Civil Recovery against adults (age 18 or older).

### **RSA 544-C:1 Recovery of Civil Damages for Willful Concealment. – (Adults Only)**

I. For purposes of this chapter, "willful concealment" shall mean willful concealment as defined in RSA 637:3-a.

II. A person who willfully conceals shall be liable for civil damages to the merchant up to \$400 plus the merchandise or the value of the merchandise if it has been damaged or rendered unrecoverable.

III. A merchant may recover civil damages for willful concealment by bringing suit in a district court or by executing a settlement agreement in the form set out in paragraph IV of this section.

IV. A merchant and a person accused of willful concealment by such merchant may agree to execute a civil settlement agreement for up to \$400 in civil damages, plus the return of the merchandise or the replacement value of the merchandise within 60 days of the date the agreement is signed. The form of the settlement agreement shall be as follows:



## Settlement of Claim for Taking Merchandise Without Payment

The undersigned, \_\_\_\_\_, having failed to pay for certain merchandise, more specifically described as follows \_\_\_\_\_, hereby agrees to pay, within 60 days of the date this agreement is signed, civil damages up to \$400, plus the merchandise or the replacement value of the merchandise. The parties agree that this payment shall constitute full and complete payment of damages to the following establishment \_\_\_\_\_. The following establishment \_\_\_\_\_ agrees to waive any and all claims it may have for civil damages.

Nothing in this agreement shall constitute an admission of guilt for purposes of criminal law. If this agreement is signed and payment is made in full within 60 days, no police report or criminal complaint will be filed by the merchant relative to this incident. However, nothing in this agreement can or will bar the state of New Hampshire from instituting such criminal prosecutions as it deems necessary.

\_\_\_\_\_  
Party #1

\_\_\_\_\_  
Party #2 for the following establishment:  
\_\_\_\_\_

(Source: New Hampshire Criminal Code Annotated 2021-2022)