

BILL ANALYSIS

C.S.H.B. 2482
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Observers note that individuals committing the offense of organized retail theft often deactivate a fire exit alarm or an anti-theft device used to protect retail merchandise, and the observers assert that statutory provisions related to this offense do not adequately address this issue. Interested parties contend that organized criminal enterprises, including gangs and foreign nationals, are often behind organized retail theft crimes and that these crimes have been linked to the funding of domestic and international terrorism, drugs, guns, prostitution, and human smuggling. The interested parties believe that Texas must impose stronger punishment and penalties on these large-scale organized retail thefts because they lead to retail business losses and closings, the loss of jobs, and the loss of sales tax revenue, which in turn will have a devastating effect on Texas' economy.

C.S.H.B. 2482 seeks to remedy this issue by enhancing certain penalties and punishment relating to certain theft crimes.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2482 amends the Penal Code to expand the circumstances under which a theft offense ranging from a Class C misdemeanor to a second degree felony, based on the value of the property stolen, is increased to the next higher category of offense for punishment purposes to include a showing on the trial of the offense that the actor, during the commission of the offense, intentionally, knowingly, or recklessly caused a fire exit alarm to sound or otherwise become activated, deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding, or used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

C.S.H.B. 2482 removes from the conditions that constitute the offense of organized retail theft the requirement that the stolen merchandise be valued at not less than \$1,500. The bill makes the offense of organized retail theft a Class B misdemeanor if the total value of the merchandise involved in the activity is less than \$50 or a Class A misdemeanor if the total value of the merchandise involved in the activity is \$50 or more but less than \$500. The bill makes such an offense a state jail felony if the total value of the merchandise involved in the activity is \$500 or more but less than \$1,500, rather than \$1,500 or more but less than \$20,000. The bill makes such an offense a third degree felony if the total value of the merchandise involved in the activity is \$1,500 or more but less than \$20,000, rather than \$20,000 or more but less than \$100,000. The bill makes such an offense a second degree felony if the total value of the merchandise involved in the activity is \$20,000 or more but less than \$100,000, rather than \$100,000 or more but less than \$200,000. The bill makes such an offense a first degree felony if the total value of the merchandise involved in the activity is \$100,000 or more, rather than \$200,000 or more.

C.S.H.B. 2482 increases an offense of organized retail theft to the next highest category of offense for punishment purposes if it is shown on the trial of the offense that the defendant, during the commission of the offense, intentionally, knowingly, or recklessly caused a fire exit alarm to sound or otherwise become activated, deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding, or used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector. The bill makes conforming and nonsubstantive changes.

C.S.H.B. 2482 defines "retail merchandise," "retail theft detector," and "shielding or deactivation instrument" and provides for the meaning of "fire exit alarm" by reference to the Health and Safety Code.

C.S.H.B. 2482 repeals the following provisions of the Penal Code:

- Section 31.15(a), defining "retail theft detector" and "shielding or deactivation instrument"
- Section 31.16(a), defining "retail merchandise"
- Section 31.16(e), increasing an offense of organized retail theft or a Class A or Class B misdemeanor theft offense to the next highest category of offense for punishment purposes if it is shown at trial that the defendant, with the intent that a distraction from the commission of the offense be created, intentionally, knowingly, or recklessly caused an alarm to sound or otherwise become activated during the commission of the offense

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2482 differs from the original by repealing the definitions of "retail merchandise," "retail theft detector," and "shielding or deactivation instrument" in statutory provisions relating to organized retail theft and instruments used in such theft and defining those terms in statutory provisions relating to theft, whereas the original retains the repealed definitions and references those terms in statutory provisions relating to organized retail theft. The substitute differs from the original by referencing the meaning of "fire exit alarm" in statutory provisions relating to theft, whereas the original references the meaning of that term in statutory provisions relating to organized retail theft.

C.S.H.B. 2482 contains a provision not included in the original expanding the circumstances under which a theft offense ranging from a Class C misdemeanor to a second degree felony, based on the value of the property stolen, is increased to the next higher category of offense for punishment purposes if it is shown on trial that the actor intentionally, knowingly, or recklessly caused a fire exit alarm to sound or become activated, deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding, or used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

C.S.H.B. 2482 omits provisions included in the original defining "boost" and expanding the conditions that constitute the offense of organized retail theft to include boosting one or more items of retail merchandise from a single retail establishment or multiple retail establishments in a certain manner.

C.S.H.B. 2482 differs from the original by making the offense of organized retail theft a Class B misdemeanor if the total value of the merchandise involved in the activity is less than \$50, whereas the original specifies a total value of less than \$500. The substitute differs from the original by making the offense of organized retail theft a Class A misdemeanor if that total

value is \$50 or more but less than \$500, whereas the original specifies a total value of \$500 or more but less than \$1,500.

C.S.H.B. 2482 differs from the original by changing the threshold amounts of merchandise involved in the offense of organized retail theft that make the offense a state jail felony, third degree felony, second degree felony, and first degree felony, whereas the original does not change the threshold amount. The substitute contains a provision not included in the original enhancing an offense of organized retail theft to the next higher category of offense if it is shown on the trial of the offense that the actor performed certain actions relating to alarms and detectors.

C.S.H.B. 2482 differs from the original by increasing an offense of organized retail theft ranging from a Class C misdemeanor to a second degree felony, based on the value of the property stolen, to the next higher category of offense for punishment purposes if it is shown on trial that the actor, during the commission of the offense, intentionally, knowingly, or recklessly caused a fire exit alarm to sound or otherwise become activated, deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding, or used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector, whereas the original increases those organized retail theft offenses or a Class C or Class B misdemeanor theft offense to the next highest category of offense for punishment purposes if it is shown at trial that the defendant engaged in that same conduct during the commission of the offense.

C.S.H.B. 2482 differs from the original by repealing a provision increasing an offense of organized retail theft or a Class A or Class B misdemeanor theft offense to the next highest category of offense for punishment purposes if it is shown at trial that the defendant, with the intent that a distraction from the commission of the offense be created, intentionally, knowingly, or recklessly caused an alarm to sound or otherwise become activated during the commission of the offense, whereas the original retains that provision and incorporates into the provision other conduct relating to deactivating or preventing a fire exit alarm from sounding and using a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.