

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1300  
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Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Organized retail crimes cost Texas millions of dollars in losses every year. In 2022, the Texas Organized Retail Crime Association (TxORCA) estimated a cost of \$422 million in stolen goods, which resulted in approximately \$21 million in lost state tax revenue. The National Retail Federation claims that organized retail crimes cost retailers \$720,000 per \$1 billion in sales. Cargo theft increased 46 percent in the first quarter of 2024 in comparison to the same time in 2023. Houston ranks third in the nation in retail crime rates, behind only San Francisco and Los Angeles. To protect Texans from these losses, S.B. 1300 addresses the prosecution and punishment of the criminal offenses of organized retail theft. The bill seeks to provide a more robust legal framework to deter organized retail theft by enhancing the penalties and clarifying the legal procedures involved in prosecuting such offenses.

Section by Section Analysis:

Section 1: Amends Chapter 21 of the Code of Criminal Procedure by adding Article 21.155, which relates to organized retail theft. It specifies that an indictment or information in the prosecution of an offense under Section 31.16, Penal Code, shall not be held insufficient for failure to name or describe each item of property stolen.

Section 2: Amends Chapter 38 of the Code of Criminal Procedure by adding Article 38.51, which provides definitions for "merchant" and "retail merchandise" and establishes evidentiary rules for prosecutions under Section 31.16, Penal Code.

Section 3: Amends Section 31.01 of the Penal Code by updating definitions related to retail theft.

Section 4: Amends Section 31.08 of the Penal Code, which pertains to the value of stolen property, by adding criteria for determining the value.

Section 5: Amends Section 31.16 of the Penal Code, which specifically addresses organized retail theft, by defining the offense and setting penalties.

Section 6: Specifies that the changes in law made by this Act apply only to offenses committed on or after the effective date of the Act.

As proposed, S.B. 1300 amends current law relating to the prosecution and punishment of the criminal offense of organized retail theft and increases criminal penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 21, Code of Criminal Procedure, by adding Article 21.155, as follows:

Art. 21.155. ORGANIZED RETAIL THEFT. (a) Defines "merchant."

(b) Prohibits an indictment or information in the prosecution of an offense under Section 31.16 (Organized Retail Theft), Penal Code, from being held insufficient for failure to name or describe each item of property stolen, notwithstanding Article 21.09 (Description of Property). Requires that it be sufficient to name the merchant and, if the offense level is based on a value of the property stolen, the aggregate value range of the stolen property applicable to the offense being alleged.

SECTION 2. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.51, as follows:

Art. 38.51. EVIDENCE IN PROSECUTION FOR ORGANIZED RETAIL THEFT. (a) Defines "merchant" and "retail merchandise."

(b) Provides that, in the prosecution of an offense under Section 31.16, Penal Code:

(1) if issues of intent, knowledge, and whether the defendant was acting in concert with one or more other persons are raised by the defendant's plea of not guilty, evidence that the defendant has participated in any theft offense, other than a theft offense that forms the basis of the offense under Section 31.16, Penal Code, on which the prosecution is based, is admissible for the purpose of showing intent or knowledge or as evidence that the defendant was acting in concert with one or more other persons;

(2) the unaltered price tag or other marking on retail merchandise identifying the price of the retail merchandise is prima facie evidence of the value of the retail merchandise for purposes of Section 31.08(a-1), Penal Code; and

(3) a price tag or other marking described by Subdivision (2) that identifies or is unique to a merchant is prima facie evidence of the merchant's ownership of the retail merchandise.

SECTION 3. Amends Section 31.01, Penal Code, by amending Subdivision (11) to redefine "retail merchandise" and adding Subdivision (15) to define "merchant."

SECTION 4. Amends Section 31.08, Penal Code, by amending Subsections (a), (c), and (d) and adding Subsection (a-1), as follows:

(a) Provides that, subject to additional criteria of certain subsections, including Subsection (a-1), value under Chapter 31 (Theft) is the fair market value of the property or service at the time and place of the offense or, if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.

(a-1) Provides that, in the prosecution of an offense under Section 31.16 involving retail merchandise stolen from a merchant, the value of the stolen retail merchandise is the sales price of the retail merchandise as stated, posted, or advertised by the merchant, including applicable sales tax, at the time of the offense, or the rental price of the retail merchandise as stated, posted, or advertised by the merchant, including applicable sales tax, at the time of the offense plus the cost of replacing the retail merchandise within a reasonable time after the offense.

(c) Provides that, if property or service has value that cannot be reasonably ascertained by the criteria set forth in certain subsections, including Subsection (a-1), the property or service is deemed to have a value of \$750 or more but less than \$2,500.

(d) Makes conforming and nonsubstantive changes to this subsection.

SECTION 5. Amends Section 31.16, Penal Code, as follows:

Sec. 31.16. ORGANIZED RETAIL THEFT. (a) Redesignates existing Subsection (b) as Subsection (a). Provides that a person commits an offense if the person:

- (1) acting in concert with one or more other persons, unlawfully appropriates retail merchandise, money, or other property from a merchant with the intent to deprive the merchant or the property;
- (2) on two or more occasions within a 180-day period, unlawfully appropriates retail merchandise, money, or other property from a merchant with the intent to deprive the merchant of the property;
- (3) knowingly obtains a benefit from conduct constituting an offense under Subdivision (1) or (2) that was committed by another person; or
- (4) knowingly acts in concert with one or more other persons to overwhelm the security response of a merchant or a peace officer for the purpose of committing an offense under Subdivision (1) or (2) or avoiding detection or apprehension for the offense.

Deletes existing text providing that a person commits an offense if the person intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barter, sells, or disposes of stolen retail merchandise or merchandise explicitly represented to the person as being stolen retail merchandise. Makes a nonsubstantive change.

(b) Provides that, in the prosecution of an offense under this section:

- (1) certain provisions of Section 31.03 (Theft) apply to the offense for purposes of determining whether property was unlawfully appropriated from a merchant; and
- (2) a person is presumed to have acted with the intent to deprive a merchant of retail merchandise if the person altered or removed a label, universal product code, price tag, or retail theft detector for retail merchandise, or transferred retail merchandise from the merchandise's packaging into other packaging.

(c) Provides that it is not a defense to prosecution under this section that:

- (1) a person who acted in concert with the actor has not been charged, convicted, apprehended, or identified;
- (2) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of an undercover operative or peace officer;
- (3) the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to engage in conduct constituting the offense; or
- (4) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense but would not encourage a person not predisposed to commit the offense to actually commit the offense.

(d) Creates this subsection from existing text. Provides that an offense under this section is:

- (1) a Class B misdemeanor if the total value of the property involved in the offense is less than \$100, rather than a Class C misdemeanor if the total value of the merchandise involved in the activity is less than \$100;
- (2) a Class A, rather than Class B, misdemeanor if the total value of the property involved in the offense is \$100 or more but less than \$750;
- (3) a state jail felony, rather than a Class A misdemeanor, if the total value of the property involved in the offense is \$750 or more but less than \$2,500;
- (4) a felony of the third degree, rather than a state jail felony, if the total value of the property involved in the offense is \$2,000 or more but less than \$30,000;
- (5) a felony of the second degree, rather than a felony of the third degree, if the total value of the property involved in the offense is \$30,000 or more but less than \$150,000;
- (6) a felony of the first degree, rather than a felony of the second degree, if the total value of the property involved in the offense is \$150,000 or more but less than \$300,000; or
- (7) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the total value of the property involved in the offense is \$300,000 or more.

Makes conforming changes to this subsection.

(e) Provides that, for purposes of enhancement of penalties under Subchapter D (Exceptional Sentences), Chapter 12 (Punishments), a person is considered to have been convicted of an offense under this section if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision.

Deletes text of existing Subsection (d) providing that an offense described for purposes of punishment by Subsections (c)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that the person organized, supervised, financed, or managed one or more other persons engaged in an activity described by Subsection (b); or during the commission of the offense, a person engaged in an activity described by Subsection (b) intentionally, knowingly, or recklessly caused a fire exit alarm to sound or otherwise become active, 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.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2025.