

By: Cook

H.B. No. 3167

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution and punishment of the criminal offense of organized retail theft; increasing criminal penalties.

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

SECTION 1. Chapter 21, Code of Criminal Procedure, is amended by adding Article 21.155 to read as follows:

Art. 21.155. ORGANIZED RETAIL THEFT. (a) In this article, "merchant" has the meaning assigned by Section 31.01, Penal Code.

(b) Notwithstanding Article 21.09, 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. It shall 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. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.51 to read as follows:

Art. 38.51. EVIDENCE IN PROSECUTION FOR ORGANIZED RETAIL THEFT. (a) In this article, "merchant" and "retail merchandise" have the meanings assigned by Section 31.01, Penal Code.

(b) 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

1 raised by the defendant's plea of not guilty, evidence that the  
2 defendant has participated in any theft offense, other than a theft  
3 offense that forms the basis of the offense under Section 31.16,  
4 Penal Code, on which the prosecution is based, is admissible:

5 (A) for the purpose of showing intent or  
6 knowledge; or

7 (B) as evidence that the defendant was acting in  
8 concert with one or more other persons;

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

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

17 SECTION 3. Section 31.01, Penal Code, is amended by  
18 amending Subdivision (11) and adding Subdivision (15) to read as  
19 follows:

20 (11) "Retail merchandise" means one or more items of  
21 tangible personal property displayed, held, stored, or offered for  
22 sale by a merchant [~~in a retail establishment~~]. The term includes a  
23 gift card.

24 (15) "Merchant" means any business that sells items to  
25 the public.

26 SECTION 4. Section 31.08, Penal Code, is amended by  
27 amending Subsections (a), (c), and (d) and adding Subsection (a-1)

1 to read as follows:

2 (a) Subject to the additional criteria of Subsections  
3 (a-1), (b), and (c), value under this chapter is:

4 (1) the fair market value of the property or service at  
5 the time and place of the offense; or

6 (2) if the fair market value of the property cannot be  
7 ascertained, the cost of replacing the property within a reasonable  
8 time after the theft.

9 (a-1) In the prosecution of an offense under Section 31.16  
10 involving retail merchandise stolen from a merchant, the value of  
11 the stolen retail merchandise is:

12 (1) the sales price of the retail merchandise as  
13 stated, posted, or advertised by the merchant, including applicable  
14 sales tax, at the time of the offense; or

15 (2) the rental price of the retail merchandise as  
16 stated, posted, or advertised by the merchant, including applicable  
17 sales tax, at the time of the offense plus the cost of replacing the  
18 retail merchandise within a reasonable time after the offense.

19 (c) If property or service has value that cannot be  
20 reasonably ascertained by the criteria set forth in Subsections  
21 (a), (a-1), and (b), the property or service is deemed to have a  
22 value of \$750 or more but less than \$2,500.

23 (d) If the actor proves by a preponderance of the evidence  
24 that the actor [~~he~~] gave consideration for or had a legal interest  
25 in the property or service stolen, the amount of the consideration  
26 or the value of the interest so proven shall be deducted from the  
27 value of the property or service ascertained under Subsection (a),

1 (a-1), (b), or (c) to determine value for purposes of this chapter.

2 SECTION 5. Section 31.16, Penal Code, is amended to read as  
3 follows:

4 Sec. 31.16. ORGANIZED RETAIL THEFT. (a) [~~(b)~~] A person  
5 commits an offense if the person:

6 (1) acting in concert with one or more other persons,  
7 unlawfully appropriates retail merchandise, money, or other  
8 property from a merchant with the intent to deprive the merchant of  
9 the property;

10 (2) on two or more occasions within a 180-day period,  
11 unlawfully appropriates retail merchandise, money, or other  
12 property from a merchant with the intent to deprive the merchant of  
13 the property;

14 (3) knowingly obtains a benefit from conduct  
15 constituting an offense under Subdivision (1) or (2) that was  
16 committed by another person; or

17 (4) knowingly acts in concert with one or more other  
18 persons to overwhelm the security response of a merchant or a peace  
19 officer for the purpose of committing an offense under Subdivision  
20 (1) or (2) or avoiding detection or apprehension for the offense  
21 [intentionally conducts, promotes, or facilitates an activity in  
22 which the person receives, possesses, conceals, stores, barter,  
23 sells, or disposes of:

24 [~~(1) stolen retail merchandise, or~~

25 [~~(2) merchandise explicitly represented to the person~~  
26 as being stolen retail merchandise].

27 (b) In the prosecution of an offense under this section:

1           (1) Sections 31.03(b) and (c) apply to the offense for  
2 purposes of determining whether property was unlawfully  
3 appropriated from a merchant; and

4           (2) a person is presumed to have acted with the intent  
5 to deprive a merchant of retail merchandise if the person:

6                   (A) altered or removed a label, universal product  
7 code, price tag, or retail theft detector for retail merchandise;  
8 or

9                   (B) transferred retail merchandise from the  
10 merchandise's packaging into other packaging.

11           (c) It is not a defense to prosecution under this section  
12 that:

13                   (1) a person who acted in concert with the actor has  
14 not been charged, convicted, apprehended, or identified;

15                   (2) the offense occurred as a result of a deception or  
16 strategy on the part of a law enforcement agency, including the use  
17 of an undercover operative or peace officer;

18                   (3) the actor was provided by a law enforcement agency  
19 with a facility in which to commit the offense or an opportunity to  
20 engage in conduct constituting the offense; or

21                   (4) the actor was solicited to commit the offense by a  
22 peace officer, and the solicitation was of a type that would  
23 encourage a person predisposed to commit the offense to actually  
24 commit the offense but would not encourage a person not predisposed  
25 to commit the offense to actually commit the offense.

26           (d) An offense under this section is:

27                   (1) a Class B [~~C~~] misdemeanor if the total value of the

1 property [~~merchandise~~] involved in the offense [~~activity~~] is less  
2 than \$100;

3 (2) a Class A [~~B~~] misdemeanor if the total value of the  
4 property [~~merchandise~~] involved in the offense [~~activity~~] is \$100  
5 or more but less than \$750;

6 (3) a state jail felony [~~Class A misdemeanor~~] if the  
7 total value of the property [~~merchandise~~] involved in the offense  
8 [~~activity~~] is \$750 or more but less than \$2,500;

9 (4) a [~~state jail~~] felony of the third degree if the  
10 total value of the property [~~merchandise~~] involved in the offense  
11 [~~activity~~] is \$2,500 or more but less than \$30,000;

12 (5) a felony of the second [~~third~~] degree if the total  
13 value of the property [~~merchandise~~] involved in the offense  
14 [~~activity~~] is \$30,000 or more but less than \$150,000;

15 (6) a felony of the first [~~second~~] degree if the total  
16 value of the property [~~merchandise~~] involved in the offense  
17 [~~activity~~] is \$150,000 or more but less than \$300,000; or

18 (7) a felony of the first degree punishable by  
19 imprisonment in the Texas Department of Criminal Justice for life  
20 or for any term of not more than 99 years or less than 15 years, and  
21 a fine not to exceed \$250,000, if the total value of the property  
22 [~~merchandise~~] involved in the offense [~~activity~~] is \$300,000 or  
23 more.

24 (e) For purposes of enhancement of penalties under  
25 Subchapter D, Chapter 12, a person is considered to have been  
26 convicted of an offense under this section if the person was  
27 adjudged guilty of the offense or entered a plea of guilty or nolo

1 contendere in return for a grant of deferred adjudication community  
2 supervision, regardless of whether the sentence for the offense was  
3 ever imposed or whether the sentence was probated and the person was  
4 subsequently discharged from community supervision

5 ~~[(d) An offense described for purposes of punishment by~~  
6 ~~Subsections (c)(1)-(6) is increased to the next higher category of~~  
7 ~~offense if it is shown on the trial of the offense that:~~

8 ~~[(1) the person organized, supervised, financed, or~~  
9 ~~managed one or more other persons engaged in an activity described~~  
10 ~~by Subsection (b); or~~

11 ~~[(2) during the commission of the offense, a person~~  
12 ~~engaged in an activity described by Subsection (b) intentionally,~~  
13 ~~knowingly, or recklessly:~~

14 ~~[(A) caused a fire exit alarm to sound or~~  
15 ~~otherwise become activated;~~

16 ~~[(B) deactivated or otherwise prevented a fire~~  
17 ~~exit alarm or retail theft detector from sounding; or~~

18 ~~[(C) used a shielding or deactivation instrument~~  
19 ~~to prevent or attempt to prevent detection of the offense by a~~  
20 ~~retail theft detector].~~

21 SECTION 6. The changes in law made by this Act apply only to  
22 an offense committed on or after the effective date of this Act. An  
23 offense committed before the effective date of this Act is governed  
24 by the law in effect on the date the offense was committed, and the  
25 former law is continued in effect for that purpose. For purposes of  
26 this section, an offense was committed before the effective date of  
27 this Act if any element of the offense occurred before that date.

1 SECTION 7. This Act takes effect September 1, 2025.