

HB0044S01 compared with HB0044

~~{deleted text}~~ shows text that was in HB0044 but was deleted in HB0044S01.

inserted text shows text that was not in HB0044 but was inserted into HB0044S01.

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Representative Paul Ray proposes the following substitute bill:

THEFT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~_____ The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.~~

~~}General Description:~~

~~This bill modifies the Criminal Code {by enhancing the penalty for} regarding multiple theft offenses.~~

Highlighted Provisions:

This bill:

- ▶ enhances the penalty for an individual who returns and commits ~~{retail}~~ theft again at a property where the individual has previously been prohibited from returning;
- ▶ amends the penalty for theft offenses if the defendant has committed two prior theft offenses within the prior ~~{10}~~ five years;

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- ▶ authorizes a merchant to prohibit an individual who has committed retail theft from reentering the property on which the individual committed ~~{retail}~~ theft; and
- ▶ specifies how a merchant may give written notice prohibiting an individual who has previously committed retail theft from reentering the property.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-6-412, as last amended by Laws of Utah 2010, Chapter 193

78B-3-108, as enacted by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-6-412** is amended to read:

76-6-412. Theft -- Classification of offenses -- Action for treble damages.

(1) Theft of property and services as provided in this chapter is punishable:

(a) as a second degree felony if the:

(i) value of the property or services is or exceeds \$5,000;

(ii) property stolen is a firearm or an operable motor vehicle;

(iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the time of the theft; ~~{}}or{{}}~~

(iv) property is stolen from the person of another;

~~{~~ ~~(v) the value of the property or services is or exceeds \$1,500 but is less than \$5,000 and the actor has been twice before convicted of any of the offenses listed in Subsection (2), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based; or~~

~~_____ (vi) (A) the value of property or services is equal to or exceeds \$1,500;~~

~~_____ (B) the theft occurs on a property where the offender has committed retail theft within the past five years; and~~

~~_____ (C) the offender has received written notice from the merchant prohibiting the offender~~

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from entering the property pursuant to Section 78B-3-108; or

‡ (b) as a third degree felony if:

(i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000 ~~and the theft is not an offense under Subsection (1)(a)(v)}~~;

~~{(ii)}~~(ii) the actor has been twice before convicted of any of the offenses listed in this Subsection (1)(b)(ii), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based:~~{(A)}~~

~~{(A)}~~(A) any theft, any robbery, or any burglary with intent to commit theft;~~{(B)}~~

~~{(B)}~~(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or~~{(C)}~~

~~{(C)}~~(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B).~~{(iii)}~~

~~{(iii)}~~~~{(iii)}~~ in a case not amounting to a second-degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes;

~~{(iii)}~~ (iii) the value of the property or services is or exceeds \$500 but is less than \$1,500, and the actor has been convicted previously two or more times of any of the offenses listed in Subsection (2), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based; or

‡ (iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;

(B) the theft occurs on a property where the offender has committed ~~{retail}~~any theft within the past five years; and

(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or

(c) as a class A misdemeanor if:

(i) the value of the property stolen is or exceeds \$500 but is less than \$1,500; [~~or~~]

~~{(ii)}~~ (ii) the value of the property or services is less than \$500 and the actor has been convicted previously two or more times of any of the offenses listed in Subsection (2), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based; or

‡ ~~{(iii)}~~(ii) (A) the value of property or services is less than \$500;

(B) the theft occurs on a property where the offender has committed ~~{retail}~~any theft within the past five years; and

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(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or

(d) as a class B misdemeanor if the value of the property stolen is less than \$500~~+~~.

~~(2) The offenses referred to in Subsections (1)(a), (b), and (c) are:~~

~~(a) theft, retail theft as defined in Section 76-6-602, any robbery, or any burglary with intent to commit theft;~~

~~(b) any offense under Part 5, Fraud; or~~

~~(c) any attempt to commit any offense listed under this Subsection (2);~~

~~[(2)] (3) and the theft is not an offense under Subsection (1)(c).~~

(2) Any [person] individual who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection ~~{}~~76-6-412~~{}~~(1)(b)~~{}~~(iii)~~{}~~(ii), is civilly liable for three times the amount of actual damages, if any~~{ are}~~ sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

Section 2. Section **78B-3-108** is amended to read:

78B-3-108. Shoplifting -- Merchant's rights -- Civil liability for shoplifting by adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice required for penalty demand.

(1) As used in this section:

(a) "Merchandise" has the same meaning as provided in Section 76-6-601.

(b) "Merchant" has the same meaning as provided in Section 76-6-601.

(c) "Minor" has the same meaning as provided in Section 76-6-601.

(d) "Premises" has the same meaning as "retail mercantile establishment" found in Section 76-6-601.

~~[(c) { } "Wrongful taking of merchandise" { } "Retail theft"] has the same meaning { } as "retail theft" { } as described in Section 76-6-602.]~~

(2) A merchant may request an individual on [his] the merchant's premises to place or keep in full view any merchandise the individual may have removed, or which the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose. The merchant may not be criminally or civilly liable for having made the request.

(3) A merchant who has reason to believe that [~~merchandise has been wrongfully taken~~

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~~by~~ an individual ~~{}~~ ~~{an individual }~~ has committed ~~{retail theft}~~ any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and that the merchant can recover the merchandise by taking the individual into custody and detaining the individual may, for the purpose of attempting to recover the merchandise or for the purpose of informing a peace officer of the circumstances of the detention, take the individual into custody and detain the individual in a reasonable manner and for a reasonable length of time. Neither the merchant nor the merchant's employee may be criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.

(4) (a) A merchant may prohibit an individual who has committed ~~{retail theft}~~ any of the offenses listed in Subsection 76-6-412(1)(b)(ii) from reentering the premises ~~{from}~~ on which the individual has committed ~~{retail theft}~~ the offense.

(b) The merchant shall give written notice of this prohibition to the individual under Subsection (4)(a). The notice may be served by:

(i) delivering a copy to the individual personally;

(ii) sending a copy through registered or certified mail addressed to the individual at the individual's residence or usual place of business;

(iii) leaving a copy with an individual of suitable age and discretion at either location under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or place of business if the individual is absent from the residence or usual place of business; or

(iv) affixing a copy in a conspicuous place at the individual's residence or place of business.

(c) The individual serving the notice may authenticate service with the individual's signature, the method of service, and legibly documenting the date and time of service.

~~[(4)]~~ (5) An adult who ~~[wrongfully takes merchandise]~~ commits ~~{retail theft is}~~ any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is also liable in a civil action~~[, in addition to]~~ for:

(a) actual damages~~[, for]~~;

(b) a penalty to the merchant in the amount of the retail price of the merchandise not to exceed \$1,000~~[, plus]~~; and

(c) an additional penalty as determined by the court of not less than \$100 nor more than

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\$500~~{}~~, plus~~{}~~ and

~~(c)~~ } court costs and reasonable attorney fees.

~~(5)~~ (6) A minor who ~~[wrongfully takes merchandise]~~ commits ~~{retail theft}~~any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and severally liable in a civil action to the merchant for:

(a) actual damages;

(b) a penalty to be remitted to the merchant in the amount of the retail price of the merchandise not to exceed \$500 plus an additional penalty as determined by the court of not less than \$50 nor more than \$500; and

(c) court costs and reasonable attorney fees.

~~(6)~~ (7) A parent or guardian is not liable for damages under this section if the parent or guardian made a reasonable effort to restrain the wrongful taking and reported it to the merchant involved or to the law enforcement agency having primary jurisdiction once the parent or guardian knew of the minor's unlawful act. A report is not required under this section if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the merchant involved.

~~(7)~~ (8) A conviction in a criminal action ~~[of ~~{}~~shoplifting]~~ ~~{retail theft}~~for any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is not a condition precedent to a civil action authorized under Subsection ~~[(4) or]~~ (5) or (6).

~~(8)~~ (9) (a) A merchant demanding payment of a penalty under Subsection ~~[(4) or]~~ (5) or (6) shall give written notice to the ~~[person or persons]~~ individual or individuals from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

(b) This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of the penalty described in Subsection ~~[(4) or]~~ (5) or (6).

~~(9)~~ (10) The provision of Section 78B-8-201 requiring that compensatory or general damages be awarded in order to award punitive damages does not prohibit an award of a penalty under Subsection ~~[(4) or]~~ (5)~~{}~~ ~~{(6)}~~ or (7) or (6) whether or not restitution has been paid to the merchant either prior to or as part of a civil action.

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Legislative Review Note

~~as of 11-21-11 6:49 AM~~

~~Office of Legislative Research and General Counsel}~~