

## **Part 6**

### **Retail Theft**

#### **76-6-601 Definitions.**

As used in this chapter:

- (1) "Merchandise" means any personal property displayed, held or offered for sale by a merchant.
- (2) "Merchant" means an owner or operator of any retail mercantile establishment where merchandise is displayed, held or offered for sale and includes the merchant's employees, servants or agents.
- (3) "Minor" means any unmarried person under 18 years of age.
- (4) "Peace officer" has the same meaning as provided in Title 53, Chapter 13, Peace Officer Classifications.
- (5) "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking lots or areas set aside for the benefit of those patrons of the retail mercantile establishment.
- (6) "Retail mercantile establishment" means any place where merchandise is displayed, held, or offered for sale to the public.
- (7) "Retail value" means the merchant's stated or advertised price of the merchandise.
- (8) "Shopping cart" means those push carts of the types which are commonly provided by grocery stores, drug stores, or other mercantile establishments or markets for the use of the public in transporting commodities in stores and markets from the store to a place outside the store.
- (9) "Under-ring" means to cause the cash register or other sales recording device to reflect less than the retail value of the merchandise.

Amended by Chapter 282, 1998 General Session

#### **76-6-602 Retail theft, acts constituting.**

A person commits the offense of retail theft when he knowingly:

- (1) Takes possession of, conceals, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of such merchandise; or
- (2) Alters, transfers, or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value of any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the retail value with the intention of depriving the merchant of the retail value of such merchandise; or
- (3) Transfers any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the retail value of such merchandise; or
- (4) Under-rings with the intention of depriving the merchant of the retail value of the merchandise; or
- (5) Removes a shopping cart from the premises of a retail mercantile establishment with the intent of depriving the merchant of the possession, use or benefit of such cart.

Enacted by Chapter 78, 1979 General Session

**76-6-603 Detention of suspected violator by merchant -- Purposes.**

- (1) Any merchant who has probable cause to believe that a person has committed retail theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:
  - (a) to make reasonable inquiry as to whether such person has in his possession unpurchased merchandise and to make reasonable investigation of the ownership of such merchandise;
  - (b) to request identification;
  - (c) to verify such identification;
  - (d) to make a reasonable request of such person to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose;
  - (e) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer;
  - (f) in the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of that minor immediately, if possible, of this detention and to surrender custody of such minor to such person.
- (2) A merchant may make a detention as permitted herein off the premises of a retail mercantile establishment only if such detention is pursuant to an immediate pursuit of such person.

Amended by Chapter 306, 2007 General Session

**76-6-604 Defense to action by person detained.**

In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by any person detained by the merchant, it shall be a defense to such action that the merchant detaining such person had probable cause to believe that the person had committed retail theft and that the merchant acted reasonably under all circumstances.

Enacted by Chapter 78, 1979 General Session

**76-6-606 Penalty.**

An act of theft committed in violation of this part shall be punished in accordance with Subsection 76-6-412(1).

Amended by Chapter 236, 2000 General Session

**76-6-607 Report of arrest to division.**

Any arrest made for a violation of this part shall be reported by the appropriate jurisdiction to the Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103, which shall keep a record of the arrest together with the disposition of the arrest for purposes of inquiry by any law enforcement agency.

Amended by Chapter 263, 1998 General Session

**76-6-608 Theft detection shielding devices prohibited -- Penalties.**

- (1) A person may not knowingly:

- (a) make or possess any container or device used for, intended for use for, or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor, with the intent to commit a theft of merchandise;
  - (b) sell, offer to sell, advertise, give, transport, or otherwise transfer to another any container or device intended for use for or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor;
  - (c) possess any tool or instrument designed to remove any theft detection device from any merchandise, with the intent to use the tool or instrument to remove any theft detection device from any merchandise without the permission of the merchant or the person owning or in possession of the merchandise; or
  - (d) intentionally remove a theft detection device from merchandise prior to purchase and without the permission of the merchant.
- (2)
- (a) A violation of Subsection (1)(a), (b), or (c) is a class A misdemeanor.
  - (b) A violation of Subsection (1)(d) is a:
    - (i) class B misdemeanor if the value of the merchandise from which the theft detection device is removed is less than \$500; or
    - (ii) class A misdemeanor if the value of the merchandise from which the theft detection device is removed is or exceeds \$500.
- (3) A violation of Subsection (1) is a separate offense from any offense listed in Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail Theft.
- (4) Criminal prosecutions under this section do not affect any person's right of civil action for redress for damages suffered as a result of any violation of this section.

Amended by Chapter 193, 2010 General Session