

**ORGANIZED RETAIL THEFT ACT**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding retail theft offenses and penalties.

**Highlighted Provisions:**

This bill:

- ▶ establishes the offense of "organized retail theft" regarding retail theft committed as part of an organized operation;
- ▶ includes receiving merchandise obtained by retail theft as an organized retail theft offense;
- ▶ provides increased penalties for commission of organized retail theft;
- ▶ allows aggregation of total value of retail theft and organized retail theft offenses within a specified period for prosecution; and
- ▶ provides for forfeiture of property and proceeds obtained by retail theft and organized retail theft.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-6-601**, as last amended by Chapter 282, Laws of Utah 1998



28           **76-6-602**, as enacted by Chapter 78, Laws of Utah 1979

29           **76-6-603**, as enacted by Chapter 78, Laws of Utah 1979

30           **76-6-606**, as last amended by Chapter 236, Laws of Utah 2000

31 ENACTS:

32           **76-6-602.3**, Utah Code Annotated 1953

33           **76-6-602.5**, Utah Code Annotated 1953

34           **76-6-609**, Utah Code Annotated 1953

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

37           Section 1. Section **76-6-601** is amended to read:

38           **76-6-601. Definitions.**

39           As used in this chapter:

40           (1) "Merchandise" means any personal property displayed, held, or offered for sale by a  
41 retail merchant.

42           (2) "Merchant" means an owner or operator of any retail [~~mercantile~~] establishment  
43 where merchandise is displayed, held, or offered for sale and includes the merchant's  
44 employees[, servants] or agents.

45           (3) "Minor" means any unmarried person under 18 years of age.

46           (4) "Peace officer" [~~has the same meaning as provided~~] means a certified peace officer  
47 as defined in Title 53, Chapter 13, Peace Officer Classifications.

48           (5) "Premises of a retail [~~mercantile~~] establishment" includes[, ~~but is not limited to,~~]  
49 the retail [~~mercantile~~] establishment[;], any common use areas in shopping centers, and all  
50 parking lots or areas set aside for the [~~benefit~~] use of [~~those~~] patrons of the retail [~~mercantile~~]  
51 establishment.

52           (6) "Retail [~~mercantile~~] establishment" means any place where merchandise is  
53 displayed, held, or offered for sale to the public.

54           (7) "Retail property fence" means a person or business that buys retail merchandise  
55 knowing or having reason to believe that the retail merchandise is stolen.

56           [~~(7)~~] (8) "Retail value" means the merchant's stated or advertised price of the  
57 merchandise, including applicable state and local taxes.

58           [~~(8)~~] (9) "Shopping cart" means [~~those~~] push carts of the types [~~which are~~] commonly

provided by grocery stores, drug stores, or other ~~[mercantile]~~ retail establishments or markets for the use of the public in transporting commodities in ~~[stores and markets]~~ a store from the store to a place outside the store.

~~[(9)]~~ (10) "Under-ring" means to cause the cash register or other sales recording device to reflect less than the retail value of the merchandise.

Section 2. Section **76-6-602** is amended to read:

**76-6-602. Retail theft.**

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]~~ the merchandise or with the intention of depriving the merchant permanently of the possession, use, or benefit of ~~[such]~~ the merchandise without paying the retail value of ~~[such]~~ the 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]~~ the 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]~~ the 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]~~ the merchandise is displayed to any other container with the intention of depriving the merchant of the retail value of ~~[such]~~ the 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]~~ the cart.

Section 3. Section **76-6-602.3** is enacted to read:

**76-6-602.3. Organized retail theft.**

(1) A person commits the offense of organized retail theft when the person:

(a) (i) commits more than one act of retail theft resulting in a total retail value of \$1,000 or more within any 180-day period;

(ii) acts in conjunction with another person in committing the retail theft; and  
(iii) takes or causes the retail merchandise to be moved to, transferred to, or otherwise  
placed in the control of a retail property fence; or

(b) receives, possesses, conceals, stores, barter, sells, or disposes of any retail  
merchandise that the person knows or has reason to know has been obtained in violation of  
Subsection (1)(a) or Section 76-6-602.

(2) It is not a defense to a charge of violating Subsection (1)(b) that the property was  
obtained by means other than through the commission of a retail theft offense if the property  
was explicitly represented to the accused person as being obtained through the commission of a  
retail theft offense.

Section 4. Section **76-6-602.5** is enacted to read:

**76-6-602.5. Aggregation of charges -- Venue for prosecution.**

(1) Multiple violations of Section 76-6-602.3 committed within a period of 180 days  
may be aggregated into a single offense, and the degree of the single offense is determined by  
the total value of the retail merchandise:

(a) obtained or sought to be obtained under Subsection 76-6-602.3(1)(a); or

(b) received or otherwise possessed in violation of Subsection 76-6-602.3(1)(b).

(2) Prosecution for a single offense of aggregated violations under Subsection (1) may  
be commenced in any jurisdiction where one or more of the aggregated offenses occurred.

Section 5. Section **76-6-603** is amended to read:

**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 or organized retail theft may detain [such] the 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] the person has in his  
possession unpurchased merchandise and to make reasonable investigation of the ownership of  
[such] the merchandise;

[(2)] (b) to request identification;

[(3)] (c) to verify [such] the identification;

[(4)] (d) to make a reasonable request of [such] the person to place or keep in full view

any merchandise [~~such individual~~] the person may have removed, or which the merchant has reason to believe [~~he~~] the person may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose;

[~~(5)~~] (e) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer; and

[~~(6)~~] (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~~] the minor to [~~such~~] the person informed by the merchant.

(2) A merchant may make a detention as [~~permitted herein~~] allowed under this section off the premises of a retail [~~mercantile~~] establishment only if [~~such~~] the detention is pursuant to an immediate pursuit of [~~such~~] the person.

Section 6. Section **76-6-606** is amended to read:

**76-6-606. Penalties.**

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

(2) An act of organized retail theft committed in violation of Section 76-6-602.3 shall be punished as one degree higher than the penalty for retail theft under Subsection 76-6-412(1).

(3) Any person convicted of organized retail theft under Section 76-6-602.3 who, within the immediately preceding four years was convicted two or more times of retail theft under Section 76-6-602 or organized retail theft under Section 76-6-602.3 shall be sentenced to incarceration, without any suspension of the sentence, for a term of not less than 30 days.

Section 7. Section **76-6-609** is enacted to read:

**76-6-609. Forfeiture of retail merchandise and proceeds.**

All retail merchandise and proceeds from retail merchandise obtained, received, or disposed of, or otherwise possessed in violation of this part are subject to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

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**Legislative Review Note**

**as of 1-18-06 4:17 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0321**

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**Organized Retail Theft Act***08-Feb-06**10:11 AM*

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**State Impact**

Passage of this bill would create a new offense resulting in additional incarcerations. Additional costs to the Department of Corrections would be \$45,800 in FY 2007 and \$140,600 in FY 2008.

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2007</u>	<u>FY 2008</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
General Fund	\$45,800	\$140,600	\$0	\$0
<b>TOTAL</b>	<b>\$45,800</b>	<b>\$140,600</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

No fiscal impact to law-abiding citizens.

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**Office of the Legislative Fiscal Analyst**