

Representative Paul Ray proposes the following substitute bill:

RETAIL THEFT AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Code creating an offense of commercial burglary and penalties for a person who returns and commits retail theft again at a property where the person has previously been prohibited from returning.

Highlighted Provisions:

This bill:

- ▶ amends the penalty for theft offenses if the defendant has committed two prior theft offenses within the prior ten years;
- ▶ defines commercial burglary as someone who enters a merchant's property and commits retail theft after:
 - committing retail theft on that property within the past five years; and
 - receiving written notice from the merchant prohibiting the offender from entering the property;
- ▶ authorizes a merchant to prohibit a person who has committed retail theft from reentering the property from which the person has wrongfully taken merchandise;
- ▶ specifies how a merchant may give written notice prohibiting a person who has previously committed retail theft from reentering the property; and
- ▶ provides a penalty for the offense of commercial burglary, which is a retail offense



26 committed after having been told by the business owner not to return to the business because
27 the person has previously committed retail theft at the business.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **76-6-412**, as last amended by Laws of Utah 2010, Chapter 193

35 **78B-3-108**, as enacted by Laws of Utah 2008, Chapter 3



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

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

39 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

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

41 (a) as a second degree felony if the:

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

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

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

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

47 (v) the value of the property or services is or exceeds \$1,500 but is less than \$5,000

48 and the actor has been twice before convicted of any of the offenses listed in Subsection (2), if

49 each prior offense was committed within 10 years of the date of the current conviction or the

50 date of the offense upon which the current conviction is based;

51 (b) as a third degree felony if:

52 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

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

56 ~~[(A) theft, any robbery, or any burglary with intent to commit theft;]~~

57 ~~[(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or]~~
58 ~~[(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B).]~~
59 ~~[(iii)]~~ (ii) in a case not amounting to a second-degree felony, the property taken is a
60 stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny,
61 swine, poultry, or a fur-bearing animal raised for commercial purposes; or
62 (iii) the value of the property or services is or exceeds \$500 but is less than \$1,500, and
63 the actor has been twice before convicted of any of the offenses listed in Subsection (2), if each
64 prior offense was committed within 10 years of the date of the current conviction or the date of
65 the offense upon which the current conviction is based:
66 (c) as a class A misdemeanor if:
67 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or
68 (ii) the value of the property or services is less than \$500 and the actor has been twice
69 before convicted of any of the offenses listed in Subsection (2), if each prior offense was
70 committed within 10 years of the date of the current conviction or the date of the offense upon
71 which the current conviction is based; or
72 (d) as a class B misdemeanor if the value of the property stolen is less than \$500.
73 (2) The offenses referred to in Subsections (1)(a), (b), and (c) are:
74 (a) theft, any robbery, or any burglary with intent to commit theft;
75 (b) any offense under Title 76, Chapter 6, Part 5, Fraud; or
76 (c) any attempt to commit any offense under this Subsection (2).
77 ~~[(2)]~~ (3) Any person who violates Subsection 76-6-408(1) or Section 76-6-413, or
78 commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three
79 times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and
80 reasonable attorney fees.
81 Section 2. Section **78B-3-108** is amended to read:
82 **78B-3-108. Commercial burglary -- Merchant's rights -- Civil liability for retail**
83 **theft by adult or minor -- Criminal conviction not a prerequisite for civil liability --**
84 **Written notice required for penalty demand -- Penalties.**
85 (1) As used in this section:
86 (a) "Commercial burglary" means entering a merchant's property and committing retail
87 theft, as defined in Section 76-6-602, after:

88 (i) committing retail theft on that property within the past five years; and
89 (ii) receiving written notice from the merchant prohibiting the offender from entering
90 the property.

91 [~~(a)~~] (b) "Merchandise" has the same meaning as provided in Section 76-6-601.

92 [~~(b)~~] (c) "Merchant" has the same meaning as provided in Section 76-6-601.

93 [~~(c)~~] (d) "Minor" has the same meaning as provided in Section 76-6-601.

94 [~~(d)~~] (e) "Premises" has the same meaning as "retail mercantile establishment" found in
95 Section 76-6-601.

96 [~~(e)~~] (f) "Wrongful taking of merchandise" has the same meaning as "retail theft" as
97 described in Section 76-6-602.

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

103 (3) A merchant who has reason to believe that merchandise has been wrongfully taken
104 by an individual and that the merchant can recover the merchandise by taking the individual
105 into custody and detaining the individual may, for the purpose of attempting to recover the
106 merchandise or for the purpose of informing a peace officer of the circumstances of the
107 detention, take the individual into custody and detain the individual in a reasonable manner and
108 for a reasonable length of time. Neither the merchant nor the merchant's employee may be
109 criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or
110 for any other type of claim or action unless the custody and detention are unreasonable under
111 all the circumstances.

112 (4) (a) A merchant may prohibit a person who has committed retail theft from
113 reentering the property from which the person has wrongfully taken merchandise.

114 (b) The merchant shall give written notice of this prohibition to the person who has
115 previously committed retail theft as described in Section 76-6-602. The notice may be served
116 by:

117 (i) delivering a copy to the individual personally;

118 (ii) sending a copy through registered or certified mail addressed to the person at the

119 person's residence or usual place of business;

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

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

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

127 (5) A person who commits commercial burglary is guilty of:

128 (a) second degree felony if the value of the property or service is or exceeds \$5,000;

129 (b) third degree felony if the value of the property or service is or exceeds \$1,500 but is
130 less than \$5,000;

131 (c) class A misdemeanor if the value of the property stolen is or exceeds \$500 but is
132 less than \$1,500; or

133 (d) class B misdemeanor if the value of the property stolen is less than \$500.

134 [~~4~~] (6) An adult who wrongfully takes merchandise is liable in a civil action, in
135 addition to actual damages, for a penalty to the merchant in the amount of the retail price of the
136 merchandise not to exceed \$1,000, plus an additional penalty as determined by the court of not
137 less than \$100 nor more than \$500, plus court costs and reasonable attorney fees.

138 [~~5~~] (7) A minor who wrongfully takes merchandise and the minor's parents or legal
139 guardian are jointly and severally liable in a civil action to the merchant for:

140 (a) actual damages;

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

144 (c) court costs and reasonable attorney fees.

145 [~~6~~] (8) A parent or guardian is not liable for damages under this section if the parent
146 or guardian made a reasonable effort to restrain the wrongful taking and reported it to the
147 merchant involved or to the law enforcement agency having primary jurisdiction once the
148 parent or guardian knew of the minor's unlawful act. A report is not required under this section
149 if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of

150 the merchant involved.

151 ~~[(7)]~~ (9) A conviction in a criminal action of shoplifting is not a condition precedent to
152 a civil action authorized under Subsection ~~[(4) or (5)]~~ (6) or (7).

153 ~~[(8)]~~ (10) (a) A merchant demanding payment of a penalty under Subsection ~~[(4) or~~
154 ~~(5)]~~ (6) or (7) shall give written notice to the person or persons from whom the penalty is
155 sought. The notice shall state:

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

158 (b) This notice shall be boldly and conspicuously displayed, in at least the same size
159 type as is used in the demand, and shall be sent with the demand for payment of the penalty
160 described in Subsection ~~[(4) or (5)]~~ (6) or (7).

161 ~~[(9)]~~ (11) The provision of Section 78B-8-201 requiring that compensatory or general
162 damages be awarded in order to award punitive damages does not prohibit an award of a
163 penalty under Subsection ~~[(4) or (5)]~~ (6) or (7) whether or not restitution has been paid to the
164 merchant either prior to or as part of a civil action.

FISCAL NOTE

H.B. 119 1st Sub. (Buff)

SHORT TITLE: Retail Theft Amendments

SPONSOR: Ray, P.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enacting this bill will cost the Courts \$48,400 in ongoing General Fund beginning in FY 2012 for increased caseloads. Fines will generate \$13,300 in ongoing General Fund revenue.

Penalties enhanced by this bill may cost the Department of Corrections and Board of Pardons and Parole \$340,000 in FY 2012, \$2,121,900 in FY 2013, and \$4,505,900 ongoing from the General Fund.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund	\$0	\$13,300	\$13,300
Total Revenue	\$0	\$13,300	\$13,300
Expenditure:			
General Fund	\$0	\$4,554,300	\$4,554,300
General Fund, One-Time	\$0	(\$4,166,000)	(\$2,384,000)
Total Expenditure	\$0	\$388,300	\$2,170,300
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$375,000)	(\$2,157,000)
Net Impact, General/Education Funds	\$0	(\$375,000)	(\$2,157,000)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enacting this bill will cost local county jails \$50/day for 30 days for offender incarceration for a total cost of \$124,500 of an expected 83 cases.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Individuals who are convicted of the offenses created in this bill and are able to pay will pay an expected \$200/incident in 66 cases for an ongoing General Fund revenue of \$13,300.