

**RETAIL THEFT AMENDMENTS**

2011 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 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:

▶ 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 commercial burglary of a third degree felony, and for subsequent offenses a penalty of a second degree felony.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **78B-3-108**, as enacted by Laws of Utah 2008, Chapter 3



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

34 Section 1. Section **78B-3-108** is amended to read:

35 **78B-3-108. Commercial burglary -- Merchant's rights -- Civil liability for retail**  
36 **theft by adult or minor -- Criminal conviction not a prerequisite for civil liability --**  
37 **Written notice required for penalty demand -- Penalties.**

38 (1) As used in this section:

39 (a) "Commercial burglary" means entering a merchant's property and committing retail  
40 theft, as defined in Section 76-6-602, after:

41 (i) committing retail theft on that property within the past five years; and

42 (ii) receiving written notice from the merchant prohibiting the offender from entering  
43 the property.

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

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

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

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

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

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

56 (3) A merchant who has reason to believe that merchandise has been wrongfully taken  
57 by an individual and that the merchant can recover the merchandise by taking the individual  
58 into custody and detaining the individual may, for the purpose of attempting to recover the

59 merchandise or for the purpose of informing a peace officer of the circumstances of the  
60 detention, take the individual into custody and detain the individual in a reasonable manner and  
61 for a reasonable length of time. Neither the merchant nor the merchant's employee may be  
62 criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or  
63 for any other type of claim or action unless the custody and detention are unreasonable under  
64 all the circumstances.

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

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

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

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

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

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

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

80 (5) (a) A person who commits commercial burglary is guilty of a third degree felony.

81 (b) A second or subsequent conviction of commercial burglary is a second degree  
82 felony.

83 ~~[(4)]~~ (6) An adult who wrongfully takes merchandise is liable in a civil action, in  
84 addition to actual damages, for a penalty to the merchant in the amount of the retail price of the  
85 merchandise not to exceed \$1,000, plus an additional penalty as determined by the court of not  
86 less than \$100 nor more than \$500, plus court costs and reasonable attorney fees.

87 ~~[(5)]~~ (7) A minor who wrongfully takes merchandise and the minor's parents or legal  
88 guardian are jointly and severally liable in a civil action to the merchant for:

89 (a) actual damages;

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

93 (c) court costs and reasonable attorney fees.

94 ~~[(6)]~~ (8) A parent or guardian is not liable for damages under this section if the parent  
95 or guardian made a reasonable effort to restrain the wrongful taking and reported it to the  
96 merchant involved or to the law enforcement agency having primary jurisdiction once the  
97 parent or guardian knew of the minor's unlawful act. A report is not required under this section  
98 if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of  
99 the merchant involved.

100 ~~[(7)]~~ (9) A conviction in a criminal action of shoplifting is not a condition precedent to  
101 a civil action authorized under Subsection ~~[(4) or (5)]~~ (6) or (7).

102 ~~[(8)]~~ (10) (a) A merchant demanding payment of a penalty under Subsection ~~[(4) or~~  
103 ~~(5)]~~ (6) or (7) shall give written notice to the person or persons from whom the penalty is  
104 sought. The notice shall state:

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

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

110 ~~[(9)]~~ (11) The provision of Section 78B-8-201 requiring that compensatory or general  
111 damages be awarded in order to award punitive damages does not prohibit an award of a  
112 penalty under Subsection ~~[(4) or (5)]~~ (6) or (7) whether or not restitution has been paid to the  
113 merchant either prior to or as part of a civil action.

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**Legislative Review Note**  
**as of 12-27-10 9:14 AM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 119

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 for a net General Fund cost of \$35,100.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
<b>Revenue:</b>			
General Fund	\$0	\$13,300	\$13,300
Total Revenue	\$0	\$13,300	\$13,300
<b>Expenditure:</b>			
General Fund	\$0	\$48,400	\$48,400
Total Expenditure	\$0	\$48,400	\$48,400
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$35,100)	(\$35,100)
Net Impact, General/Education Funds	\$0	(\$35,100)	(\$35,100)

## 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.