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THEFT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Lyle W. Hillyard

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 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 ~~§~~→ **specified** ←~~§~~ theft offenses if the defendant has committed two prior theft offenses within the prior 10 years;
- ▶ 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

H.B. 44



28 Utah Code Sections Affected:

29 AMENDS:

30 76-6-412, as last amended by Laws of Utah 2010, Chapter 193

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 76-6-412 is amended to read:

35 76-6-412. Theft -- Classification of offenses -- Action for treble damages.

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

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

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

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

40 (iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the
41 time of the theft; [or]

42 (iv) property is stolen from the person of another; ~~§~~ → or ← ~~§~~

43 ~~§~~ → [(v) the value of the property or services is or exceeds \$1,500 but is less than \$5,000

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

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

46 date of the offense upon which the current conviction is based; or

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

48 ~~_____ (B) (v)(A) ←§~~ the theft occurs on a property where the offender has committed retail theft

48a within

49 the past five years; and

50 ~~§~~ → [(C) (B) ←§] the offender has received written notice from the merchant prohibiting the
50a offender

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

52 (b) as a third degree felony if:

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

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

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

59 ~~[(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or]~~
60 ~~[(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B).]~~
61 ~~[(iii)]~~ (ii) in a case not amounting to a second-degree felony, the property taken is a
62 stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny,
63 swine, poultry, or a fur-bearing animal raised for commercial purposes;
64 (iii) the value of the property or services is or exceeds \$500 but is less than \$1,500, and
65 the actor has been convicted previously two or more times of any of the offenses listed in
66 Subsection (2), if each prior offense was committed within 10 years of the date of the current
67 conviction or the date of the offense upon which the current conviction is based; or
68 (iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;
69 (B) the theft occurs on a property where the offender has committed retail theft within
70 the past five years; and
71 (C) the offender has received written notice from the merchant prohibiting the offender
72 from entering the property pursuant to Section 78B-3-108; or
73 (c) as a class A misdemeanor if:
74 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500; [or]
75 (ii) the value of the property or services is less than \$500 and the actor has been
76 convicted previously two or more times of any of the offenses listed in Subsection (2), if each
77 prior offense was committed within 10 years of the date of the current conviction or the date of
78 the offense upon which the current conviction is based; or
79 (iii) (A) the value of property or services is less than \$500;
80 (B) the theft occurs on a property where the offender has committed retail theft within
81 the past five years; and
82 (C) the offender has received written notice from the merchant prohibiting the offender
83 from entering the property pursuant to Section 78B-3-108; or
84 (d) as a class B misdemeanor if the value of the property stolen is less than \$500.
85 (2) The offenses referred to in Subsections (1)(a), (b), and (c) are:
86 (a) theft, retail theft as defined in Section 76-6-602, any robbery, or any burglary with
87 intent to commit theft;
88 (b) any offense under Part 5, Fraud; or
89 (c) any attempt to commit any offense listed under this Subsection (2).

90 ~~[(2)]~~ (3) Any ~~[person]~~ individual who violates Subsection 76-6-408(1) or Section
91 76-6-413, or commits theft of property described in Subsection ~~[76-6-412](1)(b)[(iii)]~~(ii), is
92 civilly liable for three times the amount of actual damages, if any are sustained by the plaintiff,
93 and for costs of suit and reasonable attorney fees.

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

95 **78B-3-108. Shoplifting -- Merchant's rights -- Civil liability for shoplifting by**
96 **adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice**
97 **required for penalty demand.**

98 (1) As used in this section:

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

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

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

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

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

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

111 (3) A merchant who has reason to believe that ~~[merchandise has been wrongfully taken~~
112 ~~by an individual]~~ an individual has committed retail theft and that the merchant can recover the
113 merchandise by taking the individual into custody and detaining the individual may, for the
114 purpose of attempting to recover the merchandise or for the purpose of informing a peace
115 officer of the circumstances of the detention, take the individual into custody and detain the
116 individual in a reasonable manner and for a reasonable length of time. Neither the merchant
117 nor the merchant's employee may be criminally or civilly liable for false arrest, false
118 imprisonment, slander, or unlawful detention or for any other type of claim or action unless the
119 custody and detention are unreasonable under all the circumstances.

120 (4) (a) A merchant may prohibit an individual who has committed retail theft from

121 reentering the premises from which the individual has committed retail theft.

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

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

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

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

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

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

134 ~~[(4)]~~ (5) An adult who ~~[wrongfully takes merchandise]~~ commits retail theft is liable in
135 a civil action~~[, in addition to]~~ for:

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

137 (b) a penalty to the merchant in the amount of the retail price of the merchandise not to
138 exceed \$1,000, plus an additional penalty as determined by the court of not less than \$100 nor
139 more than \$500~~[, plus]~~; and

140 (c) court costs and reasonable attorney fees.

141 ~~[(5)]~~ (6) A minor who ~~[wrongfully takes merchandise]~~ commits retail theft and the
142 minor's parents or legal guardian are jointly and severally liable in a civil action to the
143 merchant for:

144 (a) actual damages;

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

148 (c) court costs and reasonable attorney fees.

149 ~~[(6)]~~ (7) A parent or guardian is not liable for damages under this section if the parent
150 or guardian made a reasonable effort to restrain the wrongful taking and reported it to the
151 merchant involved or to the law enforcement agency having primary jurisdiction once the

152 parent or guardian knew of the minor's unlawful act. A report is not required under this section
153 if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of
154 the merchant involved.

155 ~~[(7)]~~ (8) A conviction in a criminal action of [~~shoplifting~~] retail theft is not a condition
156 precedent to a civil action authorized under Subsection [~~(4) or~~] (5) or (6).

157 ~~[(8)]~~ (9) (a) A merchant demanding payment of a penalty under Subsection [~~(4) or~~] (5)
158 or (6) shall give written notice to the person or persons from whom the penalty is sought. The
159 notice shall state:

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

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

165 ~~[(9)]~~ (10) The provision of Section 78B-8-201 requiring that compensatory or general
166 damages be awarded in order to award punitive damages does not prohibit an award of a
167 penalty under Subsection [~~(4) or (5)]~~ (6) or (7) whether or not restitution has been paid to the
168 merchant either prior to or as part of a civil action.

Legislative Review Note
as of 11-21-11 6:49 AM

Office of Legislative Research and General Counsel