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RWH 3/7/08

P.L. 2006, CHAPTER 56, *approved August 2, 2006*
Senate, No. 273

1 **AN ACT** concerning organized retail theft, amending N.J.S.2C:20-
2 11 and supplementing chapter 20 of Title 2C of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:20-11 is amended to read as follows:

9 a. Definitions. The following definitions apply to this section:

10 (1) "Shopping cart" means those push carts of the type or types
11 which are commonly provided by grocery stores, drug stores or
12 other retail mercantile establishments for the use of the public in
13 transporting commodities in stores and markets and, incidentally,
14 from the stores to a place outside the store;

15 (2) "Store or other retail mercantile establishment" means a
16 place where merchandise is displayed, held, stored or sold or
17 offered to the public for sale;

18 (3) "Merchandise" means any goods, chattels, foodstuffs or
19 wares of any type and description, regardless of the value thereof;

20 (4) "Merchant" means any owner or operator of any store or
21 other retail mercantile establishment, or any agent, servant,
22 employee, lessee, consignee, officer, director, franchisee or
23 independent contractor of such owner or proprietor;

24 (5) "Person" means any individual or individuals, including an
25 agent, servant or employee of a merchant where the facts of the
26 situation so require;

27 (6) "Conceal" means to conceal merchandise so that, although
28 there may be some notice of its presence, it is not visible through
29 ordinary observation;

30 (7) "Full retail value" means the merchant's stated or advertised
31 price of the merchandise;

32 (8) "Premises of a store or retail mercantile establishment"
33 means and includes but is not limited to, the retail mercantile
34 establishment; any common use areas in shopping centers and all
35 parking areas set aside by a merchant or on behalf of a merchant for
36 the parking of vehicles for the convenience of the patrons of such
37 retail mercantile establishment;

38 (9) "Under-ring" means to cause the cash register or other sale
39 recording device to reflect less than the full retail value of the
40 merchandise;

41 (10) Antishoplifting or inventory control device countermeasure"
42 means any item or device which is designed, manufactured,
43 modified, or altered to defeat any antishoplifting or inventory
44 control device;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (11) “Organized retail theft enterprise” means any association of
2 two or more persons who engage in the conduct of or are associated
3 for the purpose of effectuating the transfer or sale of shoplifted
4 merchandise.

5 b. Shoplifting. Shoplifting shall consist of any one or more of
6 the following acts:

7 (1) For any person purposely to take possession of, carry away,
8 transfer or cause to be carried away or transferred, any merchandise
9 displayed, held, stored or offered for sale by any store or other retail
10 mercantile establishment with the intention of depriving the
11 merchant of the possession, use or benefit of such merchandise or
12 converting the same to the use of such person without paying to the
13 merchant the full retail value thereof.

14 (2) For any person purposely to conceal upon his person or
15 otherwise any merchandise offered for sale by any store or other
16 retail mercantile establishment with the intention of depriving the
17 merchant of the processes, use or benefit of such merchandise or
18 converting the same to the use of such person without paying to the
19 merchant the value thereof.

20 (3) For any person purposely to alter, transfer or remove any
21 label, price tag or marking indicia of value or any other markings
22 which aid in determining value affixed to any merchandise
23 displayed, held, stored or offered for sale by any store or other retail
24 mercantile establishment and to attempt to purchase such
25 merchandise personally or in consort with another at less than the
26 full retail value with the intention of depriving the merchant of all
27 or some part of the value thereof.

28 (4) For any person purposely to transfer any merchandise
29 displayed, held, stored or offered for sale by any store or other retail
30 merchandise establishment from the container in or on which the
31 same shall be displayed to any other container with intent to deprive
32 the merchant of all or some part of the retail value thereof.

33 (5) For any person purposely to under-ring with the intention of
34 depriving the merchant of the full retail value thereof.

35 (6) For any person purposely to remove a shopping cart from the
36 premises of a store or other retail mercantile establishment without
37 the consent of the merchant given at the time of such removal with
38 the intention of permanently depriving the merchant of the
39 possession, use or benefit of such cart.

40 c. Gradation. (1) Shoplifting constitutes a crime of the second
41 degree under subsection b. of this section if the full retail value of
42 the merchandise is **【\$75,000.00】** \$75,000 or more, or the offense is
43 committed in furtherance of or in conjunction with an organized
44 retail theft enterprise and the full retail value of the merchandise is
45 \$1,000 or more.

46 (2) Shoplifting constitutes a crime of the third degree under
47 subsection b. of this section if the full retail value of the

1 merchandise exceeds **【\$500.00】** \$500 but is less than **【\$75,000.00】**
2 \$75,000, or the offense is committed in furtherance of or in
3 conjunction with an organized retail theft enterprise and the full
4 retail value of the merchandise is less than \$1,000.

5 (3) Shoplifting constitutes a crime of the fourth degree under
6 subsection b. of this section if the full retail value of the
7 merchandise is at least \$200.00 but does not exceed \$500.00.

8 (4) Shoplifting is a disorderly persons offense under subsection
9 b. of this section if the full retail value of the merchandise is less
10 than \$200.00.

11 The value of the merchandise involved in a violation of this
12 section may be aggregated in determining the grade of the offense
13 where the acts or conduct constituting a violation were committed
14 pursuant to one scheme or course of conduct, whether from the
15 same person or several persons, or were committed in furtherance
16 of or in conjunction with an organized retail theft enterprise.

17 Additionally, notwithstanding the term of imprisonment provided
18 in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting
19 offense shall be sentenced to perform community service as
20 follows: for a first offense, at least ten days of community service;
21 for a second offense, at least 15 days of community service; and for
22 a third or subsequent offense, a maximum of 25 days of community
23 service and any person convicted of a third or subsequent
24 shoplifting offense shall serve a minimum term of imprisonment of
25 not less than 90 days.

26 d. Presumptions. Any person purposely concealing unpurchased
27 merchandise of any store or other retail mercantile establishment,
28 either on the premises or outside the premises of such store or other
29 retail mercantile establishment, shall be prima facie presumed to
30 have so concealed such merchandise with the intention of depriving
31 the merchant of the possession, use or benefit of such merchandise
32 without paying the full retail value thereof, and the finding of such
33 merchandise concealed upon the person or among the belongings of
34 such person shall be prima facie evidence of purposeful
35 concealment; and if such person conceals, or causes to be
36 concealed, such merchandise upon the person or among the
37 belongings of another, the finding of the same shall also be prima
38 facie evidence of willful concealment on the part of the person so
39 concealing such merchandise.

40 e. A law enforcement officer, or a special officer, or a merchant,
41 who has probable cause for believing that a person has willfully
42 concealed unpurchased merchandise and that he can recover the
43 merchandise by taking the person into custody, may, for the purpose
44 of attempting to effect recovery thereof, take the person into
45 custody and detain him in a reasonable manner for not more than a
46 reasonable time, and the taking into custody by a law enforcement
47 officer or special officer or merchant shall not render such person
48 criminally or civilly liable in any manner or to any extent

1 whatsoever.

2 Any law enforcement officer may arrest without warrant any
3 person he has probable cause for believing has committed the
4 offense of shoplifting as defined in this section.

5 A merchant who causes the arrest of a person for shoplifting, as
6 provided for in this section, shall not be criminally or civilly liable
7 in any manner or to any extent whatsoever where the merchant has
8 probable cause for believing that the person arrested committed the
9 offense of shoplifting.

10 f. Any person who possesses or uses any antishoplifting or
11 inventory control device countermeasure within any store or other
12 retail mercantile establishment is guilty of a disorderly persons
13 offense.

14 (cf: P.L.2000, c.16, s.1)

15

16 2. (New section) A person is a leader of an organized retail theft
17 enterprise if he conspires with others as an organizer, supervisor,
18 financier or manager, to engage for profit in a scheme or course of
19 conduct to effectuate the transfer or sale of shoplifted merchandise.
20 Leader of organized retail theft enterprise is a crime of the second
21 degree. Notwithstanding the provisions of subsection a. of
22 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
23 or five times the retail value of the merchandise seized at the time
24 of the arrest, whichever is greater.

25 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
26 leader of organized retail theft enterprise shall not merge with the
27 conviction for any offense which is the object of the conspiracy.
28 Nothing contained in this section shall prohibit the court from
29 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
30 section be construed in any way to preclude or limit the prosecution
31 or conviction of any person for conspiracy under N.J.S.2C:5-2, or
32 any prosecution or conviction for any other offense.

33 It shall not be necessary in any prosecution under this section for
34 the State to prove that any intended profit was actually realized. The
35 trier of fact may infer that a particular scheme or course of conduct
36 was undertaken for profit from all of the attending circumstances,
37 including but not limited to the number of persons involved in the
38 scheme or course of conduct, the actor's net worth and his
39 expenditures in relation to his legitimate sources of income, the
40 amount of merchandise involved, or the amount of cash or currency
41 involved.

42 It shall not be a defense to a prosecution under this section that
43 any shoplifted merchandise was brought into or transported in this
44 State solely for ultimate distribution in another jurisdiction; nor
45 shall it be a defense that any profit was intended to be made in
46 another jurisdiction.

47

48 3. This act shall take effect immediately.

S273

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Criminalizes organized retail theft and establishes crime of

4

leader of organized retail theft enterprise.

SENATE, No. 273

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

Co-Sponsored by:

Senator Sweeney

SYNOPSIS

Criminalizes organized retail theft and establishes crime of leader of organized retail theft enterprise.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning organized retail theft, amending N.J.S.2C:20-
2 11 and supplementing chapter 20 of Title 2C of the New Jersey
3 Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. N.J.S.2C:20-11 is amended to read as follows:

9 a. Definitions. The following definitions apply to this section:

10 (1) "Shopping cart" means those push carts of the type or types
11 which are commonly provided by grocery stores, drug stores or
12 other retail mercantile establishments for the use of the public in
13 transporting commodities in stores and markets and, incidentally,
14 from the stores to a place outside the store;

15 (2) "Store or other retail mercantile establishment" means a
16 place where merchandise is displayed, held, stored or sold or
17 offered to the public for sale;

18 (3) "Merchandise" means any goods, chattels, foodstuffs or
19 wares of any type and description, regardless of the value thereof;

20 (4) "Merchant" means any owner or operator of any store or
21 other retail mercantile establishment, or any agent, servant,
22 employee, lessee, consignee, officer, director, franchisee or
23 independent contractor of such owner or proprietor;

24 (5) "Person" means any individual or individuals, including an
25 agent, servant or employee of a merchant where the facts of the
26 situation so require;

27 (6) "Conceal" means to conceal merchandise so that, although
28 there may be some notice of its presence, it is not visible through
29 ordinary observation;

30 (7) "Full retail value" means the merchant's stated or advertised
31 price of the merchandise;

32 (8) "Premises of a store or retail mercantile establishment"
33 means and includes but is not limited to, the retail mercantile
34 establishment; any common use areas in shopping centers and all
35 parking areas set aside by a merchant or on behalf of a merchant for
36 the parking of vehicles for the convenience of the patrons of such
37 retail mercantile establishment;

38 (9) "Under-ring" means to cause the cash register or other sale
39 recording device to reflect less than the full retail value of the
40 merchandise;

41 (10) "Antishoplifting or inventory control device
42 countermeasure" means any item or device which is designed,
43 manufactured, modified, or altered to defeat any antishoplifting or
44 inventory control device;

45 (11) "Organized retail theft enterprise" means any association of

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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2 for the purpose of effectuating the transfer or sale of shoplifted
3 merchandise.

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9 mercantile establishment with the intention of depriving the
10 merchant of the possession, use or benefit of such merchandise or
11 converting the same to the use of such person without paying to the
12 merchant the full retail value thereof.

13 (2) For any person purposely to conceal upon his person or
14 otherwise any merchandise offered for sale by any store or other
15 retail mercantile establishment with the intention of depriving the
16 merchant of the processes, use or benefit of such merchandise or
17 converting the same to the use of such person without paying to the
18 merchant the value thereof.

19 (3) For any person purposely to alter, transfer or remove any
20 label, price tag or marking indicia of value or any other markings
21 which aid in determining value affixed to any merchandise
22 displayed, held, stored or offered for sale by any store or other
23 retail mercantile establishment and to attempt to purchase such
24 merchandise personally or in consort with another at less than the
25 full retail value with the intention of depriving the merchant of all
26 or some part of the value thereof.

27 (4) For any person purposely to transfer any merchandise
28 displayed, held, stored or offered for sale by any store or other retail
29 merchandise establishment from the container in or on which the
30 same shall be displayed to any other container with intent to deprive
31 the merchant of all or some part of the retail value thereof.

32 (5) For any person purposely to under-ring with the intention of
33 depriving the merchant of the full retail value thereof.

34 (6) For any person purposely to remove a shopping cart from the
35 premises of a store or other retail mercantile establishment without
36 the consent of the merchant given at the time of such removal with
37 the intention of permanently depriving the merchant of the
38 possession, use or benefit of such cart.

39 c. Gradation. (1) Shoplifting constitutes a crime of the second
40 degree under subsection b. of this section if the full retail value of
41 the merchandise is ~~[\$75,000.00]~~ \$75,000 or more, or the offense is
42 committed in furtherance of or in conjunction with an organized
43 retail theft enterprise and the full retail value of the merchandise is
44 \$1,000 or more.

45 (2) Shoplifting constitutes a crime of the third degree under
46 subsection b. of this section if the full retail value of the
47 merchandise exceeds ~~[\$500.00]~~ \$500 but is less than ~~[\$75,000.00]~~

1 \$75,000, or the offense is committed in furtherance of or in
2 conjunction with an organized retail theft enterprise and the full
3 retail value of the merchandise is less than \$1,000.

4 (3) Shoplifting constitutes a crime of the fourth degree under
5 subsection b. of this section if the full retail value of the
6 merchandise is at least \$200.00 but does not exceed \$500.00.

7 (4) Shoplifting is a disorderly persons offense under subsection
8 b. of this section if the full retail value of the merchandise is less
9 than \$200.00.

10 The value of the merchandise involved in a violation of this
11 section may be aggregated in determining the grade of the offense
12 where the acts or conduct constituting a violation were committed
13 pursuant to one scheme or course of conduct, whether from the
14 same person or several persons, or were committed in furtherance
15 of or in conjunction with an organized retail theft enterprise.

16 Additionally, notwithstanding the term of imprisonment provided
17 in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting
18 offense shall be sentenced to perform community service as
19 follows: for a first offense, at least ten days of community service;
20 for a second offense, at least 15 days of community service; and for
21 a third or subsequent offense, a maximum of 25 days of community
22 service and any person convicted of a third or subsequent
23 shoplifting offense shall serve a minimum term of imprisonment of
24 not less than 90 days.

25 d. Presumptions. Any person purposely concealing unpurchased
26 merchandise of any store or other retail mercantile establishment,
27 either on the premises or outside the premises of such store or other
28 retail mercantile establishment, shall be prima facie presumed to
29 have so concealed such merchandise with the intention of depriving
30 the merchant of the possession, use or benefit of such merchandise
31 without paying the full retail value thereof, and the finding of such
32 merchandise concealed upon the person or among the belongings of
33 such person shall be prima facie evidence of purposeful
34 concealment; and if such person conceals, or causes to be
35 concealed, such merchandise upon the person or among the
36 belongings of another, the finding of the same shall also be prima
37 facie evidence of willful concealment on the part of the person so
38 concealing such merchandise.

39 e. A law enforcement officer, or a special officer, or a merchant,
40 who has probable cause for believing that a person has willfully
41 concealed unpurchased merchandise and that he can recover the
42 merchandise by taking the person into custody, may, for the purpose
43 of attempting to effect recovery thereof, take the person into
44 custody and detain him in a reasonable manner for not more than a
45 reasonable time, and the taking into custody by a law enforcement
46 officer or special officer or merchant shall not render such person
47 criminally or civilly liable in any manner or to any extent
48 whatsoever.

1 Any law enforcement officer may arrest without warrant any
2 person he has probable cause for believing has committed the
3 offense of shoplifting as defined in this section.

4 A merchant who causes the arrest of a person for shoplifting, as
5 provided for in this section, shall not be criminally or civilly liable
6 in any manner or to any extent whatsoever where the merchant has
7 probable cause for believing that the person arrested committed the
8 offense of shoplifting.

9 f. Any person who possesses or uses any antishoplifting or
10 inventory control device countermeasure within any store or other
11 retail mercantile establishment is guilty of a disorderly persons
12 offense.

13 (cf: P.L.2000, c.16, s.1)

14

15 2. (New section) A person is a leader of an organized retail
16 theft enterprise if he conspires with others as an organizer,
17 supervisor, financier or manager, to engage for profit in a scheme or
18 course of conduct to effectuate the transfer or sale of shoplifted
19 merchandise. Leader of organized retail theft enterprise is a crime
20 of the second degree. Notwithstanding the provisions of subsection
21 a. of N.J.S.2C:43-3, the court may impose a fine not to exceed
22 \$250,000 or five times the retail value of the merchandise seized at
23 the time of the arrest, whichever is greater.

24 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
25 leader of organized retail theft enterprise shall not merge with the
26 conviction for any offense which is the object of the conspiracy.
27 Nothing contained in this section shall prohibit the court from
28 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
29 section be construed in any way to preclude or limit the prosecution
30 or conviction of any person for conspiracy under N.J.S.2C:5-2, or
31 any prosecution or conviction for any other offense.

32 It shall not be necessary in any prosecution under this section for
33 the State to prove that any intended profit was actually realized. The
34 trier of fact may infer that a particular scheme or course of conduct
35 was undertaken for profit from all of the attending circumstances,
36 including but not limited to the number of persons involved in the
37 scheme or course of conduct, the actor's net worth and his
38 expenditures in relation to his legitimate sources of income, the
39 amount of merchandise involved, or the amount of cash or currency
40 involved.

41 It shall not be a defense to a prosecution under this section that
42 any shoplifted merchandise was brought into or transported in this
43 State solely for ultimate distribution in another jurisdiction; nor
44 shall it be a defense that any profit was intended to be made in
45 another jurisdiction.

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47 3. This act shall take effect immediately.

STATEMENT

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This bill would expand the State's shoplifting law to make it a crime of the second degree to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the retail value of the shoplifted merchandise is \$1,000 or more. Second degree crimes are punishable by a term of imprisonment of five-to-ten years, a fine of up to \$150,000, or both.

It would be a crime of the third degree under the bill to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the value of the merchandise is less than \$1,000. Third degree crimes are punishable by a term of imprisonment of three-to-five years, a fine of up to \$15,000, or both.

The bill defines an organized retail theft enterprise as an association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

In determining the retail value of the shoplifted merchandise to determine the degree of the crime, the value may be aggregated if the acts or conduct constituting the violation were committed pursuant to one scheme or course of conduct or were committed in furtherance of or in conjunction with an organized retail theft enterprise.

The bill also establishes as a crime of the second degree leader of organized retail theft enterprise. A leader of an organized retail theft enterprise is a person who conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of shoplifted merchandise.

Organized retail theft is a growing problem for retailers in this State and throughout the United States. It is committed by professional theft rings which move across communities and states to pilfer merchandise from supermarkets, chain drug stores, independent pharmacies, mass merchandisers and convenience stores, then resell that merchandise over the Internet, at flea markets and to the stores from which it was stolen. Popular items include infant formula, skin care products, heartburn medications and shaving products. According to the Federal Bureau of Investigation, organized retail theft losses have amounted to as much as \$30 billion. This bill is intended to provide an additional tool to retailers to fight back against these shoplifting gangs.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 273

STATE OF NEW JERSEY

DATED: MARCH 6, 2006

The Assembly Law and Public Safety Committee reports favorably Senate Bill No. 273.

Senate Bill No. 273 expands the State's shoplifting law to make it a crime of the second degree to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the retail value of the shoplifted merchandise is \$1,000 or more. Second degree crimes are punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both.

It would be a crime of the third degree under the bill to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the value of the merchandise is less than \$1,000. Third degree crimes are punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The bill defines an organized retail theft enterprise as an association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

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According to the sponsor's statement, organized retail theft is a growing problem for retailers in this State and throughout the United States. It is committed by professional theft rings which move across communities and states to pilfer merchandise from supermarkets, chain drug stores, independent pharmacies, mass merchandisers and convenience stores, then resell that merchandise over the Internet, at flea markets and to the stores from which it was stolen. Popular items include infant formula, skin care products, heartburn medications and shaving products. According to the Federal Bureau of Investigation,

organized retail theft losses have amounted to as much as \$30 billion. This bill is intended to provide an additional tool to retailers to fight back against these shoplifting gangs.

As reported by the committee, this bill is identical to Assembly Bill No. 1675, also reported by the committee on this same date.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 273

STATE OF NEW JERSEY

DATED: JUNE 15, 2006

The Assembly Judiciary Committee reports favorably Senate Bill No.273.

This bill expands the State's shoplifting law to make it a crime of the second degree if the offense of shoplifting is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full retail value of the merchandise is \$1,000 or more. Currently, shoplifting is a crime of the second degree if the full retail value of the merchandise is \$75,000 or more. Second degree crimes are punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both.

This bill would also expand the shoplifting law to make it a crime of the third degree if the offense of shoplifting is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full value of the merchandise is less than \$1,000. At present, it is a crime of third degree if the full retail value of the merchandise exceeds \$500 but is less than \$75,000. Third degree crimes are punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The bill defines an organized retail theft enterprise as any association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

In determining the value of the merchandise to determine the degree of the crime, the value may be aggregated if the acts or conduct constituting the violation were committed pursuant to one scheme or course of conduct, whether from the same person or several person, or were committed in furtherance of or in conjunction with an organized retail theft enterprise.

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This bill is identical to Assembly Bill No. 1675.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 273

STATE OF NEW JERSEY

DATED: FEBRUARY 6, 2006

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It would be a crime of the third degree under the bill to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the value of the merchandise is less than \$1,000. Third degree crimes are punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The bill defines an organized retail theft enterprise as an association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

In determining the retail value of the shoplifted merchandise to determine the degree of the crime, the value may be aggregated if the acts or conduct constituting the violation were committed pursuant to one scheme or course of conduct or were committed in furtherance of or in conjunction with an organized retail theft enterprise.

The bill also establishes as a crime of the second degree leader of organized retail theft enterprise. A leader of an organized retail theft enterprise is a person who conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of shoplifted merchandise.

According to the sponsor's statement, organized retail theft is a growing problem for retailers in this State and throughout the United States. It is committed by professional theft rings which move across communities and states to pilfer merchandise from supermarkets, chain drug stores, independent pharmacies, mass merchandisers and convenience stores, then resell that merchandise over the Internet, at flea markets and to the stores from which it was stolen. Popular items

include infant formula, skin care products, heartburn medications and shaving products. According to the Federal Bureau of Investigation, organized retail theft losses have amounted to as much as \$30 billion. This bill is intended to provide an additional tool to retailers to fight back against these shoplifting gangs.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY, No. 1675

STATE OF NEW JERSEY

212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Assemblyman PETER J. BARNES, JR.

District 18 (Middlesex)

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman JON M. BRAMNICK

District 21 (Essex, Morris, Somerset and Union)

Assemblyman BRIAN E. RUMPF

District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Criminalizes organized retail theft and establishes crime of leader of organized retail theft enterprise.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 3/7/2006)

1 AN ACT concerning organized retail theft, amending N.J.S.2C:20-
2 11 and supplementing chapter 20 of Title 2C of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:20-11 is amended to read as follows:

9 a. Definitions. The following definitions apply to this section:

10 (1) "Shopping cart" means those push carts of the type or types
11 which are commonly provided by grocery stores, drug stores or
12 other retail mercantile establishments for the use of the public in
13 transporting commodities in stores and markets and, incidentally,
14 from the stores to a place outside the store;

15 (2) "Store or other retail mercantile establishment" means a
16 place where merchandise is displayed, held, stored or sold or
17 offered to the public for sale;

18 (3) "Merchandise" means any goods, chattels, foodstuffs or
19 wares of any type and description, regardless of the value thereof;

20 (4) "Merchant" means any owner or operator of any store or
21 other retail mercantile establishment, or any agent, servant,
22 employee, lessee, consignee, officer, director, franchisee or
23 independent contractor of such owner or proprietor;

24 (5) "Person" means any individual or individuals, including an
25 agent, servant or employee of a merchant where the facts of the
26 situation so require;

27 (6) "Conceal" means to conceal merchandise so that, although
28 there may be some notice of its presence, it is not visible through
29 ordinary observation;

30 (7) "Full retail value" means the merchant's stated or advertised
31 price of the merchandise;

32 (8) "Premises of a store or retail mercantile establishment"
33 means and includes but is not limited to, the retail mercantile
34 establishment; any common use areas in shopping centers and all
35 parking areas set aside by a merchant or on behalf of a merchant for
36 the parking of vehicles for the convenience of the patrons of such
37 retail mercantile establishment;

38 (9) "Under-ring" means to cause the cash register or other sale
39 recording device to reflect less than the full retail value of the
40 merchandise;

41 (10) "Antishoplifting or inventory control device
42 countermeasure" means any item or device which is designed,
43 manufactured, modified, or altered to defeat any antishoplifting or
44 inventory control device;

45 (11) "Organized retail theft enterprise" means any association of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 two or more persons who engage in the conduct of or are associated
2 for the purpose of effectuating the transfer or sale of shoplifted
3 merchandise.

4 b. Shoplifting. Shoplifting shall consist of any one or more of
5 the following acts:

6 (1) For any person purposely to take possession of, carry away,
7 transfer or cause to be carried away or transferred, any merchandise
8 displayed, held, stored or offered for sale by any store or other retail
9 mercantile establishment with the intention of depriving the
10 merchant of the possession, use or benefit of such merchandise or
11 converting the same to the use of such person without paying to the
12 merchant the full retail value thereof.

13 (2) For any person purposely to conceal upon his person or
14 otherwise any merchandise offered for sale by any store or other
15 retail mercantile establishment with the intention of depriving the
16 merchant of the processes, use or benefit of such merchandise or
17 converting the same to the use of such person without paying to the
18 merchant the value thereof.

19 (3) For any person purposely to alter, transfer or remove any
20 label, price tag or marking indicia of value or any other markings
21 which aid in determining value affixed to any merchandise
22 displayed, held, stored or offered for sale by any store or other
23 retail mercantile establishment and to attempt to purchase such
24 merchandise personally or in consort with another at less than the
25 full retail value with the intention of depriving the merchant of all
26 or some part of the value thereof.

27 (4) For any person purposely to transfer any merchandise
28 displayed, held, stored or offered for sale by any store or other retail
29 merchandise establishment from the container in or on which the
30 same shall be displayed to any other container with intent to deprive
31 the merchant of all or some part of the retail value thereof.

32 (5) For any person purposely to under-ring with the intention of
33 depriving the merchant of the full retail value thereof.

34 (6) For any person purposely to remove a shopping cart from the
35 premises of a store or other retail mercantile establishment without
36 the consent of the merchant given at the time of such removal with
37 the intention of permanently depriving the merchant of the
38 possession, use or benefit of such cart.

39 c. Gradation. (1) Shoplifting constitutes a crime of the second
40 degree under subsection b. of this section if the full retail value of
41 the merchandise is **[\$75,000.00]** \$75,000 or more, or the offense is
42 committed in furtherance of or in conjunction with an organized
43 retail theft enterprise and the full retail value of the merchandise is
44 \$1,000 or more.

45 (2) Shoplifting constitutes a crime of the third degree under
46 subsection b. of this section if the full retail value of the
47 merchandise exceeds **[\$500.00]** \$500 but is less than **[\$75,000.00]**

1 \$75,000, or the offense is committed in furtherance of or in
2 conjunction with an organized retail theft enterprise and the full
3 retail value of the merchandise is less than \$1,000.

4 (3) Shoplifting constitutes a crime of the fourth degree under
5 subsection b. of this section if the full retail value of the
6 merchandise is at least \$200.00 but does not exceed \$500.00.

7 (4) Shoplifting is a disorderly persons offense under subsection
8 b. of this section if the full retail value of the merchandise is less
9 than \$200.00.

10 The value of the merchandise involved in a violation of this
11 section may be aggregated in determining the grade of the offense
12 where the acts or conduct constituting a violation were committed
13 pursuant to one scheme or course of conduct, whether from the
14 same person or several persons, or were committed in furtherance
15 of or in conjunction with an organized retail theft enterprise.

16 Additionally, notwithstanding the term of imprisonment provided
17 in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting
18 offense shall be sentenced to perform community service as
19 follows: for a first offense, at least ten days of community service;
20 for a second offense, at least 15 days of community service; and for
21 a third or subsequent offense, a maximum of 25 days of community
22 service and any person convicted of a third or subsequent
23 shoplifting offense shall serve a minimum term of imprisonment of
24 not less than 90 days.

25 d. Presumptions. Any person purposely concealing unpurchased
26 merchandise of any store or other retail mercantile establishment,
27 either on the premises or outside the premises of such store or other
28 retail mercantile establishment, shall be prima facie presumed to
29 have so concealed such merchandise with the intention of depriving
30 the merchant of the possession, use or benefit of such merchandise
31 without paying the full retail value thereof, and the finding of such
32 merchandise concealed upon the person or among the belongings of
33 such person shall be prima facie evidence of purposeful
34 concealment; and if such person conceals, or causes to be
35 concealed, such merchandise upon the person or among the
36 belongings of another, the finding of the same shall also be prima
37 facie evidence of willful concealment on the part of the person so
38 concealing such merchandise.

39 e. A law enforcement officer, or a special officer, or a merchant,
40 who has probable cause for believing that a person has willfully
41 concealed unpurchased merchandise and that he can recover the
42 merchandise by taking the person into custody, may, for the purpose
43 of attempting to effect recovery thereof, take the person into
44 custody and detain him in a reasonable manner for not more than a
45 reasonable time, and the taking into custody by a law enforcement
46 officer or special officer or merchant shall not render such person
47 criminally or civilly liable in any manner or to any extent
48 whatsoever.

1 Any law enforcement officer may arrest without warrant any
2 person he has probable cause for believing has committed the
3 offense of shoplifting as defined in this section.

4 A merchant who causes the arrest of a person for shoplifting, as
5 provided for in this section, shall not be criminally or civilly liable
6 in any manner or to any extent whatsoever where the merchant has
7 probable cause for believing that the person arrested committed the
8 offense of shoplifting.

9 f. Any person who possesses or uses any antishoplifting or
10 inventory control device countermeasure within any store or other
11 retail mercantile establishment is guilty of a disorderly persons
12 offense.

13 (cf: P.L.2000, c.16, s.1)

14

15 2. (New Section) Leader of Organized Retail Theft Enterprise.

16 A person is a leader of an organized retail theft enterprise if he
17 conspires with others as an organizer, supervisor, financier or
18 manager, to engage for profit in a scheme or course of conduct to
19 effectuate the transfer or sale of shoplifted merchandise. Leader of
20 organized retail theft enterprise is a crime of the second degree.
21 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
22 the court may impose a fine not to exceed \$250,000 or five times
23 the retail value of the merchandise seized at the time of the arrest,
24 whichever is greater.

25 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
26 leader of organized retail theft enterprise shall not merge with the
27 conviction for any offense which is the object of the conspiracy.
28 Nothing contained in this section shall prohibit the court from
29 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
30 section be construed in any way to preclude or limit the prosecution
31 or conviction of any person for conspiracy under N.J.S.2C:5-2, or
32 any prosecution or conviction for any other offense.

33 It shall not be necessary in any prosecution under this section for
34 the State to prove that any intended profit was actually realized.
35 The trier of fact may infer that a particular scheme or course of
36 conduct was undertaken for profit from all of the attending
37 circumstances, including but not limited to the number of persons
38 involved in the scheme or course of conduct, the actor's net worth
39 and his expenditures in relation to his legitimate sources of income,
40 the amount of merchandise involved, or the amount of cash or
41 currency involved.

42 It shall not be a defense to a prosecution under this section that
43 any shoplifted merchandise was brought into or transported in this
44 State solely for ultimate distribution in another jurisdiction; nor
45 shall it be a defense that any profit was intended to be made in
46 another jurisdiction.

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48 3. This act shall take effect immediately.

STATEMENT

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This bill would expand the State's shoplifting law to make it a crime of the second degree to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the retail value of the shoplifted merchandise is \$1,000 or more. Second degree crimes are punishable by a term of imprisonment of five-to-ten years, a fine of up to \$150,000, or both.

It would be a crime of the third degree under the bill to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the value of the merchandise is less than \$1,000. Third degree crimes are punishable by a term of imprisonment of three-to-five years, a fine of up to \$15,000, or both.

The bill defines an organized retail theft enterprise as an association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

In determining the retail value of the shoplifted merchandise to determine the degree of the crime, the value may be aggregated if the acts or conduct constituting the violation were committed pursuant to one scheme or course of conduct or were committed in furtherance of or in conjunction with an organized retail theft enterprise.

The bill also establishes as a crime of the second degree leader of organized retail theft enterprise. A leader of an organized retail theft enterprise is a person who conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of shoplifted merchandise.

Organized retail theft is a growing problem for retailers in this State and throughout the United States. It is committed by professional theft rings which move across communities and states to pilfer merchandise from supermarkets, chain drug stores, independent pharmacies, mass merchandisers and convenience stores, then resell that merchandise over the Internet, at flea markets and to the stores from which it was stolen. Popular items include infant formula, skin care products, heartburn medications and shaving products. According to the Federal Bureau of Investigation, organized retail theft losses have amounted to as much as \$30 billion. This bill is intended to provide an additional tool to retailers to fight back against these shoplifting gangs.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1675

STATE OF NEW JERSEY

DATED: MARCH 6, 2006

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 1675.

Assembly Bill No. 1675 expands the State's shoplifting law to make it a crime of the second degree to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the retail value of the shoplifted merchandise is \$1,000 or more. Second degree crimes are punishable by a term of imprisonment of five-to-ten years, a fine of up to \$150,000, or both.

It would be a crime of the third degree under the bill to shoplift in furtherance of or in conjunction with an organized retail theft enterprise when the value of the merchandise is less than \$1,000. Third degree crimes are punishable by a term of imprisonment of three-to-five years, a fine of up to \$15,000, or both.

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According to the sponsor's statement, organized retail theft is a growing problem for retailers in this State and throughout the United States. It is committed by professional theft rings which move across communities and states to pilfer merchandise from supermarkets, chain drug stores, independent pharmacies, mass merchandisers and convenience stores, then resell that merchandise over the Internet, at flea markets and to the stores from which it was stolen. Popular items include infant formula, skin care products, heartburn medications and shaving products. According to the Federal Bureau of Investigation,

organized retail theft losses have amounted to as much as \$30 billion. This bill is intended to provide an additional tool to retailers to fight back against these shoplifting gangs.

As reported by the committee, this bill is identical to Senate Bill No. 273, also reported by the committee on this same date.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1675

STATE OF NEW JERSEY

DATED: JUNE 15, 2006

The Assembly Judiciary Committee reports favorably Assembly Bill No.1675.

This bill expands the State's shoplifting law to make it a crime of the second degree if the offense of shoplifting is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full retail value of the merchandise is \$1,000 or more. Currently, shoplifting is a crime of the second degree if the full retail value of the merchandise is \$75,000 or more. Second degree crimes are punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both.

This bill would also expand the shoplifting law to make it a crime of the third degree if the offense of shoplifting is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full value of the merchandise is less than \$1,000. At present, it is a crime of third degree if the full retail value of the merchandise exceeds \$500 but is less than \$75,0000. Third degree crimes are punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The bill defines an organized retail theft enterprise as any association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

In determining the value of the merchandise to determine the degree of the crime, the value may be aggregated if the acts or conduct constituting the violation were committed pursuant to one scheme or course of conduct, whether from the same person or several person, or were committed in furtherance of or in conjunction with an organized retail theft enterprise.

The bill also establishes as a crime of the second degree leader of organized retail theft enterprise. A leader of an organized retail theft enterprise is a person who conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of shoplifted merchandise.

According to the sponsor's statement, organized retail theft is a growing problem for retailers in this State and throughout the United States. It is committed by professional theft rings which move across

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