

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

P.L.2013, CHAPTER 58, *approved May 9, 2013*
Senate, No. 2092 (*First Reprint*)

1 AN ACT concerning criminal penalties for offenses related to theft
2 from a ¹cargo¹ carrier ¹and designated as Lieutenant Scott Jenkins'
3 Law¹, amending N.J.S.2C:20-1 ¹, N.J.S.2C:20-2¹ and N.J.S.
4 2C:20-7 and supplementing Title 2C of the New Jersey Statutes.
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. N.J.S.2C:20-1 is amended to read as follows:
10 2C:20-1. Definitions. In chapters 20 and 21, unless a different
11 meaning plainly is required:

12 a. "Deprive" means: (1) to withhold or cause to be withheld
13 property of another permanently or for so extended a period as to
14 appropriate a substantial portion of its economic value, or with
15 purpose to restore only upon payment of reward or other
16 compensation; or (2) to dispose or cause disposal of the property so
17 as to make it unlikely that the owner will recover it.

18 b. "Fiduciary" means an executor, general administrator of an
19 intestate, administrator with the will annexed, substituted
20 administrator, guardian, substituted guardian, trustee under any
21 trust, express, implied, resulting or constructive, substituted trustee,
22 executor, conservator, curator, receiver, trustee in bankruptcy,
23 assignee for the benefit of creditors, partner, agent or officer of a
24 corporation, public or private, temporary administrator,
25 administrator, administrator pendente lite, administrator ad
26 prosequendum, administrator ad litem or other person acting in a
27 similar capacity. "Fiduciary" shall ¹also¹ include an employee
28 ¹[of,] or¹ an agent of ¹a cargo carrier, as the term is defined in
29 subsection w. of this section, while acting in that capacity¹ , or
30 ¹[independant] an independent¹ contractor ¹[with a] providing
31 services to a cargo¹ carrier as ¹that term is¹ defined in subsection w.
32 of this section ¹[and the employee, agent or subcontractor shall be
33 considered to be acting in the capacity of a fiduciary of the carrier
34 employee]¹ .

35 c. "Financial institution" means a bank, insurance company,
36 credit union, savings and loan association, investment trust or other
37 organization held out to the public as a place of deposit of funds or
38 medium of savings or collective investment.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted January 28, 2013.

1 d. "Government" means the United States, any state, county,
2 municipality, or other political unit, or any department, agency or
3 subdivision of any of the foregoing, or any corporation or other
4 association carrying out the functions of government.

5 e. "Movable property" means property the location of which
6 can be changed, including things growing on, affixed to, or found in
7 land, and documents, although the rights represented thereby have
8 no physical location. "Immovable property" is all other property.

9 f. "Obtain" means: (1) in relation to property, to bring about a
10 transfer or purported transfer of a legal interest in the property,
11 whether to the obtainer or another; or (2) in relation to labor or
12 service, to secure performance thereof.

13 g. "Property" means anything of value, including real estate,
14 tangible and intangible personal property, trade secrets, contract
15 rights, choses in action and other interests in or claims to wealth,
16 admission or transportation tickets, captured or domestic animals,
17 food and drink, electric, gas, steam or other power, financial
18 instruments, information, data, and computer software, in either
19 human readable or computer readable form, copies or originals.

20 h. "Property of another" includes property in which any person
21 other than the actor has an interest which the actor is not privileged
22 to infringe, regardless of the fact that the actor also has an interest
23 in the property and regardless of the fact that the other person might
24 be precluded from civil recovery because the property was used in
25 an unlawful transaction or was subject to forfeiture as contraband.
26 Property in possession of the actor shall not be deemed property of
27 another who has only a security interest therein, even if legal title is
28 in the creditor pursuant to a conditional sales contract or other
29 security agreement.

30 i. "Trade secret" means the whole or any portion or phase of
31 any scientific or technical information, design, process, procedure,
32 formula or improvement which is secret and of value. A trade
33 secret shall be presumed to be secret when the owner thereof takes
34 measures to prevent it from becoming available to persons other
35 than those selected by the owner to have access thereto for limited
36 purposes.

37 j. "Dealer in property" means a person who buys and sells
38 property as a business.

39 k. "Traffic" means:

40 (1) To sell, transfer, distribute, dispense or otherwise dispose of
41 property to another person; or

42 (2) To buy, receive, possess, or obtain control of or use
43 property, with intent to sell, transfer, distribute, dispense or
44 otherwise dispose of such property to another person.

45 l. "Broken succession of title" means lack of regular
46 documents of purchase and transfer by any seller except the
47 manufacturer of the subject property, or possession of documents of
48 purchase and transfer by any buyer without corresponding

1 documents of sale and transfer in possession of seller, or possession
2 of documents of sale and transfer by seller without corresponding
3 documents of purchase and transfer in possession of any buyer.

4 m. "Person" includes any individual or entity or enterprise, as
5 defined herein, holding or capable of holding a legal or beneficial
6 interest in property.

7 n. "Anything of value" means any direct or indirect gain or
8 advantage to any person.

9 o. "Interest in property which has been stolen" means title or
10 right of possession to such property.

11 p. "Stolen property" means property that has been the subject
12 of any unlawful taking.

13 q. "Enterprise" includes any individual, sole proprietorship,
14 partnership, corporation, business trust, association, or other legal
15 entity, and any union or group of individuals associated in fact,
16 although not a legal entity, and it includes illicit as well as licit
17 enterprises and governmental as well as other entities.

18 r. "Attorney General" includes the Attorney General of New
19 Jersey, his assistants and deputies. The term shall also include a
20 county prosecutor or his designated assistant prosecutor, if a county
21 prosecutor is expressly authorized in writing by the Attorney
22 General to carry out the powers conferred on the Attorney General
23 by this chapter.

24 s. "Access device" means property consisting of any telephone
25 calling card number, credit card number, account number, mobile
26 identification number, electronic serial number, personal
27 identification number, or any other data intended to control or limit
28 access to telecommunications or other computer networks in either
29 human readable or computer readable form, either copy or original,
30 that can be used to obtain telephone service. Access device also
31 means property consisting of a card, code or other means of access
32 to an account held by a financial institution, or any combination
33 thereof, that may be used by the account holder for the purpose of
34 initiating electronic fund transfers.

35 t. "Defaced access device" means any access device, in either
36 human readable or computer readable form, either copy or original,
37 which has been removed, erased, defaced, altered, destroyed,
38 covered or otherwise changed in any manner from its original
39 configuration.

40 u. "Domestic companion animal" means any animal commonly
41 referred to as a pet or one that has been bought, bred, raised or
42 otherwise acquired, in accordance with local ordinances and State
43 and federal law for the primary purpose of providing
44 companionship to the owner, rather than for business or agricultural
45 purposes.

46 v. "Personal identifying information" means any name, number
47 or other information that may be used, alone or in conjunction with
48 any other information, to identify a specific individual and includes,

1 but is not limited to, the name, address, telephone number, date of
2 birth, social security number, official State issued identification
3 number, employer or taxpayer number, place of employment,
4 employee identification number, demand deposit account number,
5 savings account number, credit card number, mother's maiden
6 name, unique biometric data, such as fingerprint, voice print, retina
7 or iris image or other unique physical representation, or unique
8 electronic identification number, address or routing code of the
9 individual.

10 w. ¹**["Carrier"]** "Cargo carrier"¹ means: (1) any business or
11 establishment ¹**["primarily"]** regularly¹ operating for the purpose of
12 conveying goods ¹**[".]** or¹ property ¹**["or passengers"]**¹ for
13 compensation from one place to another by road, highway, rail,
14 water or air, ¹by any means¹ including but not limited to any
15 pipeline system, railroad car, motor truck, truck, trailer, semi-
16 trailer, commercial motor vehicle or other vehicle, any steamboat,
17 vessel or aircraft ¹**["; including the storage and warehousing of**
18 **goods and property, including, but not limited to any"]** , and any
19 business or establishment regularly engaged in the temporary
20 storage of goods or property incident to further distribution of the
21 goods or property elsewhere for commercial purposes, including but
22 not limited to businesses or establishments operating a¹ tank or
23 storage facility, warehouse, terminal, station, station house,
24 platform, depot, wharf, pier, or from any ocean, intermodal,
25 container freight station or freight consolidation facility; or (2) any
26 business or establishment that conveys goods or property which it
27 owns or has title to, from one place to another, by road, highway,
28 rail, water or air ¹by any means including but not limited to any
29 pipeline system, railroad car, motor truck, truck, trailer, semi-
30 trailer, commercial motor vehicle or other vehicle, any steamboat,
31 vessel or aircraft, and¹ including the storage and warehousing of
32 goods and property incidental to their conveyance from one place to
33 another ¹**["including baggage"]**¹ .

34 (cf: P.L.2004, c.11, s.1)

35

36 ¹2. N.J.S.2C:20-2 is amended to read as follows:

37 2C:20-2. a. Consolidation of Theft and Computer Criminal
38 Activity Offenses. Conduct denominated theft or computer
39 criminal activity in this chapter constitutes a single offense, but
40 each episode or transaction may be the subject of a separate
41 prosecution and conviction. A charge of theft or computer criminal
42 activity may be supported by evidence that it was committed in any
43 manner that would be theft or computer criminal activity under this
44 chapter, notwithstanding the specification of a different manner in
45 the indictment or accusation, subject only to the power of the court
46 to ensure fair trial by granting a bill of particulars, discovery, a

1 continuance, or other appropriate relief where the conduct of the
2 defense would be prejudiced by lack of fair notice or by surprise.

3 b. Grading of theft offenses.

4 (1) Theft constitutes a crime of the second degree if:

5 (a) The amount involved is \$75,000.00 or more;

6 (b) The property is taken by extortion;

7 (c) The property stolen is a controlled dangerous substance or
8 controlled substance analog as defined in N.J.S.2C:35-2 and the
9 quantity is in excess of one kilogram;

10 (d) The property stolen is a person's benefits under federal or
11 State law, or from any other source, which the Department of
12 Human Services or an agency acting on its behalf has budgeted for
13 the person's health care and the amount involved is \$75,000.00 or
14 more; **[or]**

15 (e) The property stolen is human remains or any part thereof;
16 except that, if the human remains are stolen by deception or
17 falsification of a document by which a gift of all or part of a human
18 body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the
19 theft constitutes a crime of the first degree; or

20 (f) It is in breach of an obligation by a person in his capacity as
21 a fiduciary and the amount involved is \$50,000.00 or more.

22 (2) Theft constitutes a crime of the third degree if:

23 (a) The amount involved exceeds \$500.00 but is less than
24 \$75,000.00;

25 (b) The property stolen is a firearm, motor vehicle, vessel, boat,
26 horse, domestic companion animal or airplane;

27 (c) The property stolen is a controlled dangerous substance or
28 controlled substance analog as defined in N.J.S.2C:35-2 and the
29 amount involved is less than \$75,000.00 or is undetermined and the
30 quantity is one kilogram or less;

31 (d) It is from the person of the victim;

32 (e) It is in breach of an obligation by a person in his capacity as
33 a fiduciary and the amount involved is less than \$50,000.00;

34 (f) It is by threat not amounting to extortion;

35 (g) It is of a public record, writing or instrument kept, filed or
36 deposited according to law with or in the keeping of any public
37 office or public servant;

38 (h) The property stolen is a person's benefits under federal or
39 State law, or from any other source, which the Department of
40 Human Services or an agency acting on its behalf has budgeted for
41 the person's health care and the amount involved is less than
42 \$75,000.00;

43 (i) The property stolen is any real or personal property related
44 to, necessary for, or derived from research, regardless of value,
45 including, but not limited to, any sample, specimens and
46 components thereof, research subject, including any warm-blooded
47 or cold-blooded animals being used for research or intended for use
48 in research, supplies, records, data or test results, prototypes or

1 equipment, as well as any proprietary information or other type of
2 information related to research;

3 (j) The property stolen is a New Jersey Prescription Blank as
4 referred to in R.S.45:14-14;

5 (k) The property stolen consists of an access device or a defaced
6 access device; or

7 (l) The property stolen consists of anhydrous ammonia and the
8 actor intends it to be used to manufacture methamphetamine.

9 (3) Theft constitutes a crime of the fourth degree if the amount
10 involved is at least \$200.00 but does not exceed \$500.00.

11 (4) Theft constitutes a disorderly persons offense if:

12 (a) The amount involved was less than \$200.00; or

13 (b) The property stolen is an electronic vehicle identification
14 system transponder.

15 The amount involved in a theft or computer criminal activity
16 shall be determined by the trier of fact. The amount shall include,
17 but shall not be limited to, the amount of any State tax avoided,
18 evaded or otherwise unpaid, improperly retained or disposed of.
19 Amounts involved in thefts or computer criminal activities
20 committed pursuant to one scheme or course of conduct, whether
21 from the same person or several persons, may be aggregated in
22 determining the grade of the offense.

23 c. Claim of right. It is an affirmative defense to prosecution
24 for theft that the actor:

25 (1) Was unaware that the property or service was that of
26 another;

27 (2) Acted under an honest claim of right to the property or
28 service involved or that he had a right to acquire or dispose of it as
29 he did; or

30 (3) Took property exposed for sale, intending to purchase and
31 pay for it promptly, or reasonably believing that the owner, if
32 present, would have consented.

33 d. Theft from spouse. It is no defense that theft or computer
34 criminal activity was from or committed against the actor's spouse,
35 except that misappropriation of household and personal effects, or
36 other property normally accessible to both spouses, is theft or
37 computer criminal activity only if it occurs after the parties have
38 ceased living together.¹

39 (cf: P.L.2011, c.1, s.1)

40

41 ¹[2.] 3.¹ N.J.S.2C:20-7 is amended to read as follows:

42 2C:20-7. Receiving Stolen Property.

43 a. Receiving. A person is guilty of theft if he knowingly
44 receives or brings into this State movable property of another
45 knowing that it has been stolen, or believing that it is probably
46 stolen. It is an affirmative defense that the property was received
47 with purpose to restore it to the owner. "Receiving" means
48 acquiring possession, control or title, or lending on the security of

1 the property.

2 b. Presumption of knowledge. The requisite knowledge or
3 belief is presumed in the case of a person who:

4 (1) Is found in possession or control of two or more items of
5 property stolen on two or more separate occasions; or

6 (2) Has received stolen property in another transaction within
7 the year preceding the transaction charged; or

8 (3) Being a person in the business of buying or selling property
9 of the sort received, acquires the property without having
10 ascertained by reasonable inquiry that the person from whom he
11 obtained it had a legal right to possess and dispose of it; or

12 (4) Is found in possession of two or more defaced access
13 devices; or

14 (5) Is found in possession of property of a 'cargo' carrier
15 without proper documentation '[, satisfactory explanation]' or
16 other evidence of right to possession.

17 (cf: P.L.1997, c.6, s.3)

18

19 ¹3.(New section) a. Notwithstanding the provisions of
20 subparagraph (e) of paragraph (2) of subsection b. of N.J.S.2C:20-2,
21 a person who commits theft from a carrier in breach of his
22 obligation in his capacity as a fiduciary is guilty of a crime of the
23 second degree. If, in the course of committing the theft, the actor
24 attempts to kill anyone, or purposely inflicts or attempts to inflict
25 serious bodily injury, or is armed with, or uses or threatens the use
26 of a deadly weapon, he is guilty of a crime of the first degree. As
27 used herein, "deadly weapon" means any firearm or other weapon,
28 device, instrument, material or substance, whether animate or
29 inanimate, which in the manner it is used or is intended to be used,
30 is known to be capable of producing death or serious bodily injury
31 or which in the manner it is fashioned would lead the victim
32 reasonably to believe it to be capable of producing death or serious
33 bodily injury.

34 b. (1) A person convicted of a second or subsequent offense in
35 breach of his obligation in his capacity as a fiduciary under this
36 section shall be sentenced to a term of imprisonment that shall
37 include, unless the person is sentenced pursuant to the provisions of
38 N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half
39 of the sentence imposed, or two years, whichever is greater, during
40 which time the defendant shall not be eligible for parole. If the
41 person is sentenced pursuant to N.J.S.2C:43-7, the court shall
42 impose a minimum term of one-third to one-half of the sentence
43 imposed, or three years, whichever is greater. The court may not
44 suspend or make any other non-custodial disposition of any person
45 sentenced as a second or subsequent offender pursuant to this
46 section. For the purposes of this section an offense is considered a
47 second or subsequent offense if the actor has at any time been
48 convicted pursuant to this section, or under any similar statute of

1 the United States, this State or any other state for an offense that is
2 substantially equivalent to this section.

3 (2) A person convicted of a second or subsequent offense in
4 breach of his obligation in his capacity as a fiduciary under this
5 section who, while in the course of committing the theft, used or
6 threatened the use of any weapon, as defined in N.J.S.2C:39-1, shall
7 be sentenced to a term of imprisonment that shall include, unless
8 the person is sentenced pursuant to the provisions of N.J.S.2C:43-7,
9 a mandatory minimum term of one-third to one-half of the sentence
10 imposed, or four years, whichever is greater, during which time the
11 defendant shall not be eligible for parole. If the person is sentenced
12 pursuant to N.J.S.2C:43-7, the court shall impose a minimum term
13 of one-third to one-half of the sentence imposed, or six years,
14 whichever is greater. The court may not suspend or make any other
15 non-custodial disposition of any person sentenced as a second or
16 subsequent offender pursuant to this section. For the purposes of
17 this section an offense is considered a second or subsequent offense
18 if the actor has at any time been convicted pursuant to this section,
19 or under any similar statute of the United States, this State or any
20 other state for an offense that is substantially equivalent to this
21 section.】¹

22

23 4. (New section) a. A person is a leader of a ‘cargo’ theft ‘【of
24 carrier property】’ network if he conspires with others as an
25 organizer, supervisor, financier or manager to engage for profit in a
26 scheme or course of conduct to unlawfully take, dispose of,
27 distribute, bring into ‘【or】 ,’ transport ‘, or store’ in this State
28 property stolen from a ‘cargo’ carrier ‘, where the amount is at least
29 \$5,000’.

30 (1) Except as provided in paragraph (2) of this subsection,
31 leader of a ‘cargo’ theft ‘【of carrier property】’ network is a crime
32 of the second degree. Notwithstanding the provisions of subsection
33 a. of N.J.S.2C:43-3, the court may impose a fine not to exceed
34 \$250,000 or five times the retail value of the property seized at the
35 time of the arrest, whichever is greater.

36 (2) Leader of a ‘cargo’ theft ‘【of carrier property】’ network is a
37 crime of the first degree if the scheme or course of conduct to
38 unlawfully take, dispose of, distribute, bring into ‘【or】 ,’ transport
39 ‘, or store’ in this State property stolen from a ‘cargo’ carrier ‘【was
40 conducted with】 included’ the use or threatened use of any ‘deadly’
41 weapon, as defined in N.J.S.2C:39-1 ‘in the commission of the
42 theft. Nothing in this subsection shall be deemed to limit the
43 authority or discretion of the State to charge or prosecute any
44 person for robbery under N.J.S.2C:15-1 or for any other offense,
45 nor shall a conviction for robbery merge with any conviction under
46 this section. Notwithstanding the provisions of subsection a. of
47 N.J.S.2C:43-3, the court may impose a fine not to exceed \$500,000

1 or five times the retail value of the property seized at the time of the
2 arrest, whichever is greater¹.

3 b. Notwithstanding the provisions of N.J.S.2C:1-8, a
4 conviction of leader of a 'cargo' theft **'[of carrier property]'**
5 network shall not merge with the conviction for any offense which
6 is the object of the conspiracy. Nothing contained in this act shall
7 prohibit the court from imposing an extended term pursuant to
8 N.J.S.2C:43-7; nor shall this act be construed in any way to
9 preclude or limit the prosecution or conviction of any person for
10 conspiracy under N.J.S.2C:5-2, or any prosecution or conviction for
11 any other offense.

12 c. It shall not be necessary in any prosecution under this **'[act]**
13 section¹ for the State to prove that any intended profit was actually
14 realized. The trier of fact may infer that a particular scheme or
15 course of conduct was undertaken for profit from all of the
16 attending circumstances, including but not limited to the number of
17 persons involved in the scheme or course of conduct, the actor's net
18 worth and his expenditures in relation to his legitimate sources of
19 income, the amount of property or number of incidents of theft, or
20 the amount of cash or currency involved.

21 d. It shall not be a defense to a prosecution under this **'[act]**
22 section¹ that the stolen property was brought into **'[or] ,'**
23 transported 'or stored' in this State solely for ultimate distribution
24 in another jurisdiction; nor shall it be a defense that any profit was
25 intended to be made in another jurisdiction.

26 e. A person convicted of a second or subsequent offense under
27 this section shall be sentenced to a term of imprisonment that shall
28 include **'[**, unless the person is sentenced pursuant to the provisions
29 of N.J.S. 2C:43-7,**']'** a mandatory minimum term of one-third to
30 one-half of the sentence imposed **'[**, or two years, whichever is
31 greater**']'**, during which time the defendant shall not be eligible for
32 parole. **'[If the person is sentenced pursuant to N.J.S.2C:43-7, the**
33 **court shall impose a minimum term of one-third to one-half of the**
34 **sentence imposed, or three years, whichever is greater.]'** The court
35 may not suspend or make any other non-custodial disposition of any
36 person sentenced as a second or subsequent offender pursuant to
37 this section. For the purposes of this section an offense is
38 considered a second or subsequent offense if the actor has at any
39 time been convicted pursuant to this section, or under any similar
40 statute of the United States, this State or any other state for an
41 offense that is substantially equivalent to this section.

42 **'[f. It shall be a rebuttable presumption that a person convicted**
43 **as leader of a theft of carrier property network authorized the use or**
44 **threatened use of a weapon, as defined in N.J.S.2C:39-1 and,**
45 **notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,**
46 **the court may impose a fine not to exceed \$500,000 or five times**
47 **the retail value of the property seized at the time of the arrest,**

1 whichever is greater.】¹

2

3 ¹【5.(New section) a. A person convicted under the provisions
4 of chapter 20 of Title 2C of the New Jersey Statutes of theft or
5 unlawful taking of property from a carrier shall be subject,
6 notwithstanding the terms of imprisonment provided in
7 N.J.S.2C:43-6 or N.J.S.2C:43-8, to a minimum term of
8 imprisonment of not less than 120 days for the second offense and
9 to a minimum term of imprisonment of not less than 270 days for a
10 third or subsequent offense.

11 b. A person convicted under the provisions of chapter 20 of
12 Title 2C of the New Jersey Statutes of theft or unlawful taking of
13 property from a carrier who, while in the course of committing the
14 theft, used or threatened the use of a deadly weapon, as defined in
15 section 3 of P.L. c. (C.) (pending before the Legislature as
16 section 3 of this bill), shall be subject, notwithstanding the terms of
17 imprisonment provided in N.J.S.2C:43-6 or N.J.S.2C:43-8, to a
18 minimum term of imprisonment of not less than 240 days for the
19 second offense and to a minimum term of imprisonment of not less
20 than 540 days for a third or subsequent offense.】¹

21

22 ¹【6.】^{5.1} (New section) a. In addition to any other disposition
23 authorized by law, a person convicted under the provisions of
24 chapter 20 of Title 2C of the New Jersey Statutes of ¹【theft or
25 unlawful】 an offense involving the¹ taking of property ¹【from a
26 carrier】 by a fiduciary¹, ¹【including】 or a person convicted under
27 P.L. , c. (C.) (pending before the Legislature as this bill) of¹
28 leader of a¹ cargo¹ theft ¹【of carrier property】¹ network¹ ¹【and】 or¹
29 operating a facility for the sale¹ or storage¹ of property stolen from
30 a ¹ cargo¹ carrier, shall ¹【, except as provided in subsection c.,】¹ be
31 subject:

32 (1) For ¹【the first offense】 a crime of the third degree¹, to a
33 penalty of \$500;

34 (2) For ¹【the second offense】 a crime of the second
35 degree¹, to a penalty of ¹【\$1,000】 \$2,500¹; and

36 (3) For a ¹【third or subsequent offense¹】 crime of the first
37 degree or any crime where the person to be sentenced has a prior
38 conviction for a crime defined in chapter 20 of Title 2C of the New
39 Jersey Statutes¹, to a penalty of ¹【\$2,000】 \$5,000¹.

40 b. ¹【In addition to any other disposition authorized by law, a
41 person convicted under the provisions of chapter 20 of Title 2C of
42 the New Jersey Statutes of theft or unlawful taking of property from
43 a carrier, including leader of a theft of carrier property network
44 who, while in the course of committing the theft, used or threatened
45 the use of a weapon, as defined in N.J.S.2C:39-1, shall be subject:

46 (1) For the first offense, to a penalty of \$1,000;

47 (2) For the second offense, to a penalty of \$2,000; and

1 (3) For a third or subsequent offense, to a penalty of \$4,000.
2 c. ¹ All penalties provided for in this section shall be collected
3 as provided for the collection of fines and restitutions in section 3
4 of P.L.1979, c.396 (C.2C:46-4), and shall be distributed in
5 accordance with the provisions of N.J.S.2C:64-6 as if the collected
6 monies were the proceeds of property forfeited pursuant to the
7 provisions of chapter 64 of Title 2C of the New Jersey Statutes.
8 However, the distributed monies are ¹first¹ to be ¹**[used]**
9 considered for use¹ for law enforcement activities related to theft
10 from a ¹cargo¹ carrier.

11
12 ¹**[7.**(New section) The offenses of theft or unlawful taking of
13 property from a carrier shall be deemed to have been committed not
14 only in the county where the violation first occurred, but also in any
15 county into which the defendant may have taken or been in
16 possession of any money, baggage, goods or property of a carrier.¹

17
18 ¹**[8.]** ¹6.¹ (New section) a. A person who knowingly maintains
19 or operates any premises, place or facility used for the storage or
20 resale of any property stolen from a ¹cargo¹ carrier is guilty of a
21 crime ¹. Where the property involved in the offense is valued at
22 \$50,000 or more, the offense is a crime¹ of the second degree.
23 Otherwise, the offense is a crime of the third degree.¹

24 b. Notwithstanding the provisions of subsection a. of
25 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
26 or five times the retail value of the property stolen from the carrier
27 seized at the time of the arrest, whichever is greater.

28 c. A person convicted of a second or subsequent offense under
29 this section shall be sentenced to a term of imprisonment that shall
30 include ¹**[**, unless the person is sentenced pursuant to the provisions
31 of N.J.S.2C:43-7,¹**]** a mandatory minimum term of one-third to one-
32 half of the sentence imposed ¹**[**, or two years, whichever is
33 greater¹**]**, during which time the defendant shall not be eligible for
34 parole. ¹**[**If the person is sentenced pursuant to N.J.S.2C:43-7, the
35 court shall impose a minimum term of one-third to one-half of the
36 sentence imposed, or three years, whichever is greater.¹**]** The court
37 may not suspend or make any other non-custodial disposition of any
38 person sentenced as a second or subsequent offender pursuant to
39 this section. For the purposes of this section an offense is
40 considered a second or subsequent offense if the actor has at any
41 time been convicted pursuant to this section, or under any similar
42 statute of the United States, this State or any other state for an
43 offense that is substantially equivalent to this section.

44
45 ¹**[9.]** ¹7.¹ This act shall take effect immediately.

S2092 [1R]

12

1

2

3

4

Lieutenant Scott Jenkins' Law; creates certain new criminal offenses aimed at theft from cargo carriers; amends theft statutes.

SENATE, No. 2092

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JUNE 21, 2012

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

SYNOPSIS

Creates certain new criminal offenses aimed at theft from carriers; amends theft statutes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2012)

1 AN ACT concerning criminal penalties for offenses related to theft
2 from a carrier, amending N.J.S. 2C:20-1 and N.J.S. 2C:20-7 and
3 supplementing Title 2C of the New Jersey 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:20-1 is amended to read as follows:
9 2C:20-1. Definitions. In chapters 20 and 21, unless a different
10 meaning plainly is required:

11 a. "Deprive" means: (1) to withhold or cause to be withheld
12 property of another permanently or for so extended a period as to
13 appropriate a substantial portion of its economic value, or with
14 purpose to restore only upon payment of reward or other
15 compensation; or (2) to dispose or cause disposal of the property so
16 as to make it unlikely that the owner will recover it.

17 b. "Fiduciary" means an executor, general administrator of an
18 intestate, administrator with the will annexed, substituted
19 administrator, guardian, substituted guardian, trustee under any
20 trust, express, implied, resulting or constructive, substituted trustee,
21 executor, conservator, curator, receiver, trustee in bankruptcy,
22 assignee for the benefit of creditors, partner, agent or officer of a
23 corporation, public or private, temporary administrator,
24 administrator, administrator pendente lite, administrator ad
25 prosequendum, administrator ad litem or other person acting in a
26 similar capacity. "Fiduciary" shall include an employee of, an
27 agent of, or independant contractor with a carrier as defined in
28 subsection w. of this section and the employee, agent or
29 subcontractor shall be considered to be acting in the capacity of a
30 fiduciary of the carrier employee.

31 c. "Financial institution" means a bank, insurance company,
32 credit union, savings and loan association, investment trust or other
33 organization held out to the public as a place of deposit of funds or
34 medium of savings or collective investment.

35 d. "Government" means the United States, any state, county,
36 municipality, or other political unit, or any department, agency or
37 subdivision of any of the foregoing, or any corporation or other
38 association carrying out the functions of government.

39 e. "Movable property" means property the location of which
40 can be changed, including things growing on, affixed to, or found in
41 land, and documents, although the rights represented thereby have
42 no physical location. "Immovable property" is all other property.

43 f. "Obtain" means: (1) in relation to property, to bring about a
44 transfer or purported transfer of a legal interest in the property,

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 whether to the obtainer or another; or (2) in relation to labor or
2 service, to secure performance thereof.

3 g. "Property" means anything of value, including real estate,
4 tangible and intangible personal property, trade secrets, contract
5 rights, choses in action and other interests in or claims to wealth,
6 admission or transportation tickets, captured or domestic animals,
7 food and drink, electric, gas, steam or other power, financial
8 instruments, information, data, and computer software, in either
9 human readable or computer readable form, copies or originals.

10 h. "Property of another" includes property in which any person
11 other than the actor has an interest which the actor is not privileged
12 to infringe, regardless of the fact that the actor also has an interest
13 in the property and regardless of the fact that the other person might
14 be precluded from civil recovery because the property was used in
15 an unlawful transaction or was subject to forfeiture as contraband.
16 Property in possession of the actor shall not be deemed property of
17 another who has only a security interest therein, even if legal title is
18 in the creditor pursuant to a conditional sales contract or other
19 security agreement.

20 i. "Trade secret" means the whole or any portion or phase of
21 any scientific or technical information, design, process, procedure,
22 formula or improvement which is secret and of value. A trade
23 secret shall be presumed to be secret when the owner thereof takes
24 measures to prevent it from becoming available to persons other
25 than those selected by the owner to have access thereto for limited
26 purposes.

27 j. "Dealer in property" means a person who buys and sells
28 property as a business.

29 k. "Traffic" means:

30 (1) To sell, transfer, distribute, dispense or otherwise dispose of
31 property to another person; or

32 (2) To buy, receive, possess, or obtain control of or use
33 property, with intent to sell, transfer, distribute, dispense or
34 otherwise dispose of such property to another person.

35 l. "Broken succession of title" means lack of regular
36 documents of purchase and transfer by any seller except the
37 manufacturer of the subject property, or possession of documents of
38 purchase and transfer by any buyer without corresponding
39 documents of sale and transfer in possession of seller, or possession
40 of documents of sale and transfer by seller without corresponding
41 documents of purchase and transfer in possession of any buyer.

42 m. "Person" includes any individual or entity or enterprise, as
43 defined herein, holding or capable of holding a legal or beneficial
44 interest in property.

45 n. "Anything of value" means any direct or indirect gain or
46 advantage to any person.

47 o. "Interest in property which has been stolen" means title or
48 right of possession to such property.

- 1 p. "Stolen property" means property that has been the subject
2 of any unlawful taking.
- 3 q. "Enterprise" includes any individual, sole proprietorship,
4 partnership, corporation, business trust, association, or other legal
5 entity, and any union or group of individuals associated in fact,
6 although not a legal entity, and it includes illicit as well as licit
7 enterprises and governmental as well as other entities.
- 8 r. "Attorney General" includes the Attorney General of New
9 Jersey, his assistants and deputies. The term shall also include a
10 county prosecutor or his designated assistant prosecutor, if a county
11 prosecutor is expressly authorized in writing by the Attorney
12 General to carry out the powers conferred on the Attorney General
13 by this chapter.
- 14 s. "Access device" means property consisting of any telephone
15 calling card number, credit card number, account number, mobile
16 identification number, electronic serial number, personal
17 identification number, or any other data intended to control or limit
18 access to telecommunications or other computer networks in either
19 human readable or computer readable form, either copy or original,
20 that can be used to obtain telephone service. Access device also
21 means property consisting of a card, code or other means of access
22 to an account held by a financial institution, or any combination
23 thereof, that may be used by the account holder for the purpose of
24 initiating electronic fund transfers.
- 25 t. "Defaced access device" means any access device, in either
26 human readable or computer readable form, either copy or original,
27 which has been removed, erased, defaced, altered, destroyed,
28 covered or otherwise changed in any manner from its original
29 configuration.
- 30 u. "Domestic companion animal" means any animal commonly
31 referred to as a pet or one that has been bought, bred, raised or
32 otherwise acquired, in accordance with local ordinances and State
33 and federal law for the primary purpose of providing
34 companionship to the owner, rather than for business or agricultural
35 purposes.
- 36 v. "Personal identifying information" means any name, number
37 or other information that may be used, alone or in conjunction with
38 any other information, to identify a specific individual and includes,
39 but is not limited to, the name, address, telephone number, date of
40 birth, social security number, official State issued identification
41 number, employer or taxpayer number, place of employment,
42 employee identification number, demand deposit account number,
43 savings account number, credit card number, mother's maiden
44 name, unique biometric data, such as fingerprint, voice print, retina
45 or iris image or other unique physical representation, or unique
46 electronic identification number, address or routing code of the
47 individual.
- 48 w. "Carrier" means: (1) any business or establishment primarily

1 operating for the purpose of conveying goods, property or
2 passengers for compensation from one place to another by road,
3 highway, rail, water or air, including but not limited to any pipeline
4 system, railroad car, motortruck, truck, trailer, semi-trailer,
5 commercial motor vehicle or other vehicle, any steamboat, vessel or
6 aircraft; including the storage and warehousing of goods and
7 property, including, but not limited to any tank or storage facility,
8 warehouse, terminal, station, station house, platform, depot, wharf,
9 pier, or from any ocean, intermodal, container freight station or
10 freight consolidation facility; or (2) any business or establishment
11 that conveys goods or property which it owns or has title to, from
12 one place to another, by road, highway, rail, water or air including
13 the storage and warehousing of goods and property incidental to
14 their conveyance from one place to another including baggage.
15 (cf: P.L. 2004, c.11)

16

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

18 2C:20-7. Receiving Stolen Property.

19 a. Receiving. A person is guilty of theft if he knowingly
20 receives or brings into this State movable property of another
21 knowing that it has been stolen, or believing that it is probably
22 stolen. It is an affirmative defense that the property was received
23 with purpose to restore it to the owner. "Receiving" means
24 acquiring possession, control or title, or lending on the security of
25 the property.26 b. Presumption of knowledge. The requisite knowledge or
27 belief is presumed in the case of a person who:28 (1) Is found in possession or control of two or more items of
29 property stolen on two or more separate occasions; or30 (2) Has received stolen property in another transaction within
31 the year preceding the transaction charged; or32 (3) Being a person in the business of buying or selling property
33 of the sort received, acquires the property without having
34 ascertained by reasonable inquiry that the person from whom he
35 obtained it had a legal right to possess and dispose of it; or36 (4) Is found in possession of two or more defaced access
37 devices; or38 (5) Is found in possession of property of a carrier without proper
39 documentation, satisfactory explanation or other evidence of right
40 to possession.

41 (cf: P.L.1997, c.6, s.3)

42

43 3. (New section) a. Notwithstanding the provisions of
44 subparagraph (e) of paragraph (2) of subsection b. of N.J.S.2C:20-2,
45 a person who commits theft from a carrier in breach of his
46 obligation in his capacity as a fiduciary is guilty of a crime of the
47 second degree. If, in the course of committing the theft, the actor
48 attempts to kill anyone, or purposely inflicts or attempts to inflict

1 serious bodily injury, or is armed with, or uses or threatens the use
2 of a deadly weapon, he is guilty of a crime of the first degree. As
3 used herein, "deadly weapon" means any firearm or other weapon,
4 device, instrument, material or substance, whether animate or
5 inanimate, which in the manner it is used or is intended to be used,
6 is known to be capable of producing death or serious bodily injury
7 or which in the manner it is fashioned would lead the victim
8 reasonably to believe it to be capable of producing death or serious
9 bodily injury.

10 b. (1) A person convicted of a second or subsequent offense in
11 breach of his obligation in his capacity as a fiduciary under this
12 section shall be sentenced to a term of imprisonment that shall
13 include, unless the person is sentenced pursuant to the provisions of
14 N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half
15 of the sentence imposed, or two years, whichever is greater, during
16 which time the defendant shall not be eligible for parole. If the
17 person is sentenced pursuant to N.J.S.2C:43-7, the court shall
18 impose a minimum term of one-third to one-half of the sentence
19 imposed, or three years, whichever is greater. The court may not
20 suspend or make any other non-custodial disposition of any person
21 sentenced as a second or subsequent offender pursuant to this
22 section. For the purposes of this section an offense is considered a
23 second or subsequent offense if the actor has at any time been
24 convicted pursuant to this section, or under any similar statute of
25 the United States, this State or any other state for an offense that is
26 substantially equivalent to this section.

27 (2) A person convicted of a second or subsequent offense in
28 breach of his obligation in his capacity as a fiduciary under this
29 section who, while in the course of committing the theft, used or
30 threatened the use of any weapon, as defined in N.J.S.2C:39-1, shall
31 be sentenced to a term of imprisonment that shall include, unless
32 the person is sentenced pursuant to the provisions of N.J.S.2C:43-7,
33 a mandatory minimum term of one-third to one-half of the sentence
34 imposed, or four years, whichever is greater, during which time the
35 defendant shall not be eligible for parole. If the person is sentenced
36 pursuant to N.J.S.2C:43-7, the court shall impose a minimum term
37 of one-third to one-half of the sentence imposed, or six years,
38 whichever is greater. The court may not suspend or make any other
39 non-custodial disposition of any person sentenced as a second or
40 subsequent offender pursuant to this section. For the purposes of
41 this section an offense is considered a second or subsequent offense
42 if the actor has at any time been convicted pursuant to this section,
43 or under any similar statute of the United States, this State or any
44 other state for an offense that is substantially equivalent to this
45 section.

46
47 4. (New section) a. A person is a leader of a theft of carrier
48 property network if he conspires with others as an organizer,

1 supervisor, financier or manager to engage for profit in a scheme or
2 course of conduct to unlawfully take, dispose of, distribute, bring
3 into or transport in this State property stolen from a carrier.

4 (1) Except as provided in paragraph (2) of this subsection,
5 leader of a theft of carrier property network is a crime of the second
6 degree. Notwithstanding the provisions of subsection a. of
7 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
8 or five times the retail value of the property seized at the time of the
9 arrest, whichever is greater.

10 (2) Leader of a theft of carrier property network is a crime of the
11 first degree if the scheme or course of conduct to unlawfully take,
12 dispose of, distribute, bring into or transport in this State property
13 stolen from a carrier was conducted with the use or threatened use
14 of any weapon, as defined in N.J.S.2C:39-1.

15 b. Notwithstanding the provisions of N.J.S.2C:1-8, a
16 conviction of leader of a theft of carrier property network shall not
17 merge with the conviction for any offense which is the object of the
18 conspiracy. Nothing contained in this act shall prohibit the court
19 from imposing an extended term pursuant to N.J.S.2C:43-7; nor
20 shall this act be construed in any way to preclude or limit the
21 prosecution or conviction of any person for conspiracy under
22 N.J.S.2C:5-2, or any prosecution or conviction for any other
23 offense.

24 c. It shall not be necessary in any prosecution under this act for
25 the State to prove that any intended profit was actually realized.
26 The trier of fact may infer that a particular scheme or course of
27 conduct was undertaken for profit from all of the attending
28 circumstances, including but not limited to the number of persons
29 involved in the scheme or course of conduct, the actor's net worth
30 and his expenditures in relation to his legitimate sources of income,
31 the amount of property or number of incidents of theft, or the
32 amount of cash or currency involved.

33 d. It shall not be a defense to a prosecution under this act that
34 the stolen property was brought into or transported in this State
35 solely for ultimate distribution in another jurisdiction; nor shall it be
36 a defense that any profit was intended to be made in another
37 jurisdiction.

38 e. A person convicted of a second or subsequent offense under
39 this section shall be sentenced to a term of imprisonment that shall
40 include, unless the person is sentenced pursuant to the provisions of
41 N.J.S. 2C:43-7, a mandatory minimum term of one-third to one-half
42 of the sentence imposed, or two years, whichever is greater, during
43 which time the defendant shall not be eligible for parole. If the
44 person is sentenced pursuant to N.J.S.2C:43-7, the court shall
45 impose a minimum term of one-third to one-half of the sentence
46 imposed, or three years, whichever is greater. The court may not
47 suspend or make any other non-custodial disposition of any person
48 sentenced as a second or subsequent offender pursuant to this

1 section. For the purposes of this section an offense is considered a
2 second or subsequent offense if the actor has at any time been
3 convicted pursuant to this section, or under any similar statute of
4 the United States, this State or any other state for an offense that is
5 substantially equivalent to this section.

6 f. It shall be a rebuttable presumption that a person convicted
7 as leader of a theft of carrier property network authorized the use or
8 threatened use of a weapon, as defined in N.J.S.2C:39-1 and,
9 notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
10 the court may impose a fine not to exceed \$500,000 or five times
11 the retail value of the property seized at the time of the arrest,
12 whichever is greater.

13

14 5. (New section) a. A person convicted under the provisions
15 of chapter 20 of Title 2C of the New Jersey Statutes of theft or
16 unlawful taking of property from a carrier shall be subject,
17 notwithstanding the terms of imprisonment provided in
18 N.J.S.2C:43-6 or N.J.S.2C:43-8, to a minimum term of
19 imprisonment of not less than 120 days for the second offense and
20 to a minimum term of imprisonment of not less than 270 days for a
21 third or subsequent offense.

22 b. A person convicted under the provisions of chapter 20 of
23 Title 2C of the New Jersey Statutes of theft or unlawful taking of
24 property from a carrier who, while in the course of committing the
25 theft, used or threatened the use of a deadly weapon, as defined in
26 section 3 of P.L. c. (C.) (pending before the Legislature as
27 section 3 of this bill), shall be subject, notwithstanding the terms of
28 imprisonment provided in N.J.S.2C:43-6 or N.J.S.2C:43-8, to a
29 minimum term of imprisonment of not less than 240 days for the
30 second offense and to a minimum term of imprisonment of not less
31 than 540 days for a third or subsequent offense.

32

33 6. (New section) a. In addition to any other disposition
34 authorized by law, a person convicted under the provisions of
35 chapter 20 of Title 2C of the New Jersey Statutes of theft or
36 unlawful taking of property from a carrier, including leader of a
37 theft of carrier property network and operating a facility for the sale
38 of property stolen from a carrier, shall, except as provided in
39 subsection c., be subject:

- 40 (1) For the first offense, to a penalty of \$500;
41 (2) For the second offense, to a penalty of \$1,000; and
42 (3) For a third or subsequent offense, to a penalty of \$2,000.

43 b. In addition to any other disposition authorized by law, a
44 person convicted under the provisions of chapter 20 of Title 2C of
45 the New Jersey Statutes of theft or unlawful taking of property from
46 a carrier, including leader of a theft of carrier property network
47 who, while in the course of committing the theft, used or threatened
48 the use of a weapon, as defined in N.J.S.2C:39-1, shall be subject:

- 1 (1) For the first offense, to a penalty of \$1,000;
- 2 (2) For the second offense, to a penalty of \$2,000; and
- 3 (3) For a third or subsequent offense, to a penalty of \$4,000.
- 4 c. All penalties provided for in this section shall be collected as
- 5 provided for the collection of fines and restitutions in section 3 of
- 6 P.L.1979, c.396 (C.2C:46-4), and shall be distributed in accordance
- 7 with the provisions of N.J.S.2C:64-6 as if the collected monies were
- 8 the proceeds of property forfeited pursuant to the provisions of
- 9 chapter 64 of Title 2C of the New Jersey Statutes. However, the
- 10 distributed monies are to be used for law enforcement activities
- 11 related to theft from a carrier.
- 12
- 13 7. (New section) The offenses of theft or unlawful taking of
- 14 property from a carrier shall be deemed to have been committed not
- 15 only in the county where the violation first occurred, but also in any
- 16 county into which the defendant may have taken or been in
- 17 possession of any money, baggage, goods or property of a carrier.
- 18
- 19 8. (New section) a. A person who knowingly maintains or
- 20 operates any premises, place or facility used for the storage or
- 21 resale of any property stolen from a carrier is guilty of a crime of
- 22 the second degree.
- 23 b. Notwithstanding the provisions of subsection a. of
- 24 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
- 25 or five times the retail value of the property stolen from the carrier
- 26 seized at the time of the arrest, whichever is greater.
- 27 c. A person convicted of a second or subsequent offense under
- 28 this section shall be sentenced to a term of imprisonment that shall
- 29 include, unless the person is sentenced pursuant to the provisions of
- 30 N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half
- 31 of the sentence imposed, or two years, whichever is greater, during
- 32 which time the defendant shall not be eligible for parole. If the
- 33 person is sentenced pursuant to N.J.S.2C:43-7, the court shall
- 34 impose a minimum term of one-third to one-half of the sentence
- 35 imposed, or three years, whichever is greater. The court may not
- 36 suspend or make any other non-custodial disposition of any person
- 37 sentenced as a second or subsequent offender pursuant to this
- 38 section. For the purposes of this section an offense is considered a
- 39 second or subsequent offense if the actor has at any time been
- 40 convicted pursuant to this section, or under any similar statute of
- 41 the United States, this State or any other state for an offense that is
- 42 substantially equivalent to this section.
- 43
- 44 9. This act shall take effect immediately.

STATEMENT

1

2

3 This bill adds a definition of "carrier" to the chapter on theft
4 offenses and makes certain specific provisions for these type of
5 theft offenses. The bill includes employees, agents or
6 subcontractors of carriers within the definition of "fiduciary." The
7 bill adds a presumption that property is stolen if the person is
8 lacking proper documentation for the cargo, satisfactory
9 explanation or other evidence of right to possession.

10 Under the bill, a person who commits theft from a carrier in
11 breach of his obligation in his capacity as a fiduciary shall be
12 convicted of a crime of the second degree. If, in the course of
13 committing the theft, he attempts to kill anyone, or purposely
14 inflicts or attempts to inflict serious bodily injury, or is armed with,
15 or uses or threatens the use of a deadly weapon, he is guilty of a
16 crime of the first degree. As used in the bill, "deadly weapon"
17 means any firearm or other weapon, device, instrument, material or
18 substance, whether animate or inanimate, which in the manner it is
19 used or is intended to be used, is known to be capable of producing
20 death or serious bodily injury or which in the manner it is fashioned
21 would lead the victim reasonably to believe it to be capable of
22 producing death or serious bodily injury, he is guilty of a crime of
23 the first degree.

24 In addition, the bill creates the second degree crimes of leader of
25 a theft of carrier property network, maintaining or operating any
26 premises, place or facility used for a carrier's stolen property and
27 the first degree crime of leader of a theft of carrier property
28 network, if the scheme or course of conduct to unlawfully take,
29 dispose of, distribute, bring into or transport in this State property
30 stolen from a carrier was conducted with the use or threatened use
31 of any weapon. Upon conviction, the court may impose a fine equal
32 to five times the value of the property seized at the time of arrest or
33 \$250,000 for a crime of the second degree and \$500,000 for a crime
34 of the first degree, whichever is greater.

35 The bill provides that a person convicted of a second or
36 subsequent offense in breach of his obligation as a fiduciary, leader
37 of theft of carrier property network, or maintaining or operating any
38 premises, place or facility used for stolen property shall face certain
39 mandatory minimum terms of imprisonment.

40 The bill also provides that a person convicted of theft or
41 unlawful taking of property from a carrier shall be subject to a
42 minimum term of imprisonment of not less than 120 days for the
43 second offense and not less than 270 days for a third or subsequent
44 offense. If the crime was conducted with the use or threatened use
45 of any weapon, the person shall be subject to a minimum term of
46 imprisonment of not less than 240 days for the second offense and
47 not less than 540 for a third or subsequent offense.

48 In addition, a person convicted of theft or unlawful taking of

S2092 PENNACCHIO, GORDON

11

1 property from a carrier, leader of a theft of carrier property network,
2 or operating a facility for sale of stolen carrier property shall be
3 subject to a \$500 penalty for a first offense, a \$1,000 penalty for a
4 second offense, and a \$2,000 penalty for a third or subsequent
5 offense. If the offense involved the use or threatened use of a
6 weapon, the person shall be subject to a \$1,000 penalty for a first
7 offense, a \$2,000 penalty for a second offense, and a \$4,000 penalty
8 for a third or subsequent offense.

9 This bill is intended to discourage theft from carriers which has
10 been a growing problem in this State as it has been in most other
11 parts of this country. The FBI has estimated that over \$6 billion
12 worth of cargo is stolen in this country every year. The cost of this
13 theft is borne by every citizen in the increased price we must pay
14 for goods and transportation services. New Jersey is one of the
15 busiest centers of commerce in this county. Our ports, our airports,
16 our rail facilities, our roads and highways and the facilities serving
17 our motor carrier industry have become key targets for such theft.
18 This bill attempts to provide proper recourse against those
19 responsible, especially the leaders of network organizations
20 involved in such crimes and the employees of carriers who
21 participate in such crimes.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2092

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 2013

The Senate Judiciary Committee reports favorably and with committee amendments, Senate Bill No. 2092.

This bill, as amended, concerns criminal offenses related to theft from a cargo carrier, and is designated as Lieutenant Scott Jenkins' Law. Lieutenant Jenkins, who passed away in 2003, was a founding member of the State Police Cargo Theft and Robbery Unit.

The bill would first expand the scope of the theft statutes by adding a definition for "cargo carrier," which generally refers to: any business or establishment regularly operating for the purpose of conveying goods or property for compensation by various means, including by road, rail, water, or air; any business or establishment regularly engaged in the temporary storage of goods or property incident to further distribution elsewhere for commercial purposes; or any business or establishment conveying goods or property which it owns or has title to, from one place to another, by various means, including by road, rail, water, or air. The definition of "fiduciary" would also be expanded, to expressly cover an employee or agent of a cargo carrier, or an independent contractor providing services to a cargo carrier.

As to theft generally, described in N.J.S.2C:20-2, the bill would establish that a person, as a fiduciary, commits a crime of the second degree if the theft involves a breach of that person's fiduciary obligations and the amount involved is \$50,000 or more. If the amount is less than \$50,000, the theft involving the fiduciary would be a crime of the third degree. A crime of the second degree is ordinarily punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; while a crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The bill also updates the statutory provisions addressing the crime of receipt of stolen property. As added by the bill, a person would be presumed, for purposes of prosecution, to have knowledge or belief of receipt of stolen property if found in possession of the property of a cargo carrier without proper documentation or other evidence of right of possession.

The bill establishes a new crime of leader of a cargo theft network,

which pertains to a person conspiring with others as an organizer, supervisor, financier, or manager of conduct involving the unlawful moving, storing, or disposing of stolen property worth at least \$5,000. This crime would be graded as a crime of the second degree, except if the crime included the use or threatened use of any deadly weapon, it would be upgraded to a crime of the first degree. Although the crime of leader of a cargo theft network, regardless of degree, would maintain the ordinary term of imprisonment (second degree: five to 10 years; first degree: 10 to 20 years), the bill would implement enhanced fines. For a crime of the second degree, the court could impose a fine not to exceed \$250,000 or five times the retail value of the property seized at the time of arrest; for a crime of the first degree, the court could impose a fine not to exceed \$500,000 or five times the retail value of the property seized.

A conviction for leader of a cargo theft network could not merge with a conviction for any offense which was the object of the networking conspiracy, or for a conviction for robbery. Additionally, a person convicted of a second or subsequent offense for leader of a cargo theft network would be subject to a mandatory minimum term of imprisonment of one-third to one-half of the sentence imposed.

Another new crime established by the bill concerns the operation of any premises, place, or facility used for the storage or resale of property stolen from a cargo carrier. Such crime would be graded as a crime of the third degree, except when the property involved is valued at \$50,000 or more, which would upgrade it to a crime of the second degree. As with the new crime of leader of a cargo theft network, the ordinary terms of imprisonment would apply (third degree: three to five years; second degree: five to 10 years), but the bill would apply an enhanced fine, regardless of degree, not to exceed \$250,000 or five times the retail value of the property seized at the time of arrest. Also, a person convicted of a second or subsequent offense for operating a premises for the storage or resale of stolen cargo property would be subject to a mandatory minimum term of imprisonment of one-third to one-half of the sentence imposed.

Finally, the bill would provide for additional monetary penalties, and these monies, to be divided between various law enforcement agencies, would upon distribution first be considered for use for law enforcement activities related to theft from a cargo carrier. The following additional penalties would be imposed upon a person convicted of any theft offenses covered by the bill (theft involving a fiduciary, operating as the leader of a cargo theft network, or operating a premises for the storage or resale of stolen cargo property):

(1) a penalty of \$500, if the person was convicted of a crime of the third degree;

(2) a penalty of \$2,500, if the person was convicted of a crime of the second degree; and

(3) a penalty of \$5,000, if the person was convicted of a crime of the first degree, or any degree if the person has a prior theft conviction.

The bill, as amended and reported by the committee today, is identical to Assembly Bill No.3003(1R), reported by the Assembly Judiciary Committee on June 7, 2012 (and currently second referenced to the Assembly Appropriations Committee).

The committee amendments to the bill:

- amend the bill's title and synopsis to designate the bill as Lieutenant Scott Jenkins' Law;

- update the definition of "fiduciary" as to the description of employees, agents, and independent contractors for a cargo carrier, and rename the definition of "carrier" as "cargo carrier," while also updating the description of cargo carrier activities;

- differentiate between grades of theft involving a fiduciary, so that such theft involving \$50,000 or more would be a crime of the second degree, and involving an amount less than \$50,000 would be a crime of the third degree;

- similarly differentiate between grades of operating a premises for the storage or resale of stolen cargo property, so that such crime involving \$50,000 or more would be a crime of the second degree, and involving an amount less than \$50,000 would be a crime of the third degree;

- eliminate the term "satisfactory explanation" to describe an available means for avoiding a presumption in a prosecution that a person has knowledge or belief of receipt of stolen cargo property, since the term is overly vague;

- make the new crime of leader of a cargo theft network applicable to situations involving property worth at least \$5,000;

- add that a person's conviction for leader of a cargo theft network would not merge with a conviction for robbery;

- clarify that the fine imposed for the first degree crime of leader of a cargo theft network (because the act included the use or threatened use of a deadly weapon) is a fine not to exceed \$500,000 or five times the retail value of the property seized at the time of arrest;

- clarify that a second or subsequent offense for (1) leader of a cargo theft network or (2) operating a premises for the storage or resale of stolen cargo property would each carry mandatory minimum terms of imprisonment of one-third to one-half of the sentence imposed;and

- update the synopsis to reflect changes, herein summarized, incorporated through the amendments.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2092 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: FEBRUARY 12, 2013

SUMMARY

Synopsis: Lieutenant Scott Jenkins' Law; creates certain new criminal offenses aimed at theft from cargo carriers; amends theft statutes.

Type of Impact: General Fund expenditure, fine revenue.

Agencies Affected: Judiciary, Department of Corrections

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services concludes that since the bill creates new crimes and new fines there is no data available to determine the number of offenders who would be convicted of these crimes or the amount of fine revenue that would be collected. As a result, the potential cost and/or revenue cannot be estimated.
- The bill, designated as Lieutenant Scott Jenkins' Law, creates new criminal offenses aimed at theft from cargo carriers. Under the bill, a person who commits theft from a cargo carrier in breach of an obligation in his capacity as a fiduciary is guilty of a crime.

BILL DESCRIPTION

Senate Bill No. 2092 (1R) of 2012, designated as Lieutenant Scott Jenkins' Law, creates new criminal offenses aimed at theft from cargo carriers.

Under the bill, a person who commits theft from a cargo carrier in breach of an obligation in his capacity as a fiduciary is guilty of a crime.

SECTION 1, DEFINITIONS. The bill expands the current definition of "fiduciary" in N.J.S.2C:20-1 to provide that the term shall also include an employee or an agent of a cargo

carrier, while acting in that capacity, or an independent contractor providing services to a cargo carrier.

The bill also adds the new term “cargo carrier” to N.J.S.2C:20-1. The term is defined as: (1) any business or establishment regularly operating for the purpose of conveying goods or property for compensation from one place to another by road, highway, rail, water or air, by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and any business or establishment regularly engaged in the temporary storage of goods or property incident to further distribution of the goods or property elsewhere for commercial purposes, including but not limited to businesses or establishments operating a tank or storage facility, warehouse, terminal, station, station house, platform, depot, wharf, pier, or from any ocean, intermodal, container freight station or freight consolidation facility; or (2) any business or establishment that conveys goods or property which it owns or has title to, from one place to another, by road, highway, rail, water or air by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and including the storage and warehousing of goods and property incidental to their conveyance from one place to another.

SECTION 2, THEFT GENERALLY. Currently it is a crime of the third degree if a theft is in breach of an obligation by a person in his capacity as a fiduciary. Under the bill it would be a crime of the second degree if the theft involves a breach of an obligation by a person in his capacity as a fiduciary and the amount involved is \$50,000 or more. It would be a crime of third degree if it was a breach of an obligation by a fiduciary and the amount involved is less than \$50,000.

SECTION 3, RECEIVING STOLEN PROPERTY. The bill amends N.J.S.2C:20-7, Receiving Stolen Property, to add a presumption that a person is guilty of theft if he is found in possession of property of a cargo carrier without proper documentation or other evidence of right to possession.

SECTION 4, NEW CRIME: LEADER OF A CARGO THEFT NETWORK.

The bill creates the crime of “leader of a cargo theft network.” A person is a leader of a cargo theft network if he conspires with others as an organizer, supervisor, financier or manager to engage for profit in a scheme or course of conduct to unlawfully take, dispose of, distribute, bring into, transport or store in this State property stolen from a cargo carrier where the amount is at least \$5,000. Leader of a cargo theft network is a crime of the first degree if in the commission of the theft the person used or threatened to use a deadly weapon. Otherwise, it is a crime of the second degree.

A crime of the first degree is generally punishable by a term of imprisonment of 10 to 20 years, a fine of \$200,000 or both. However, under the bill the court may impose a fine not to exceed \$500,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the first degree crime of leader of a cargo theft network. A crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000 or both. Under the bill the court may impose a fine not to exceed \$250,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the second degree crime of leader of a cargo theft network.

The bill provides that it shall not be deemed to limit the authority or discretion of the State to charge or prosecute any person for robbery or for any other offense, nor shall a conviction for robbery merge with any conviction for leader of a cargo theft network. The bill also provides that a conviction of leader of a cargo theft network could not merge with the conviction for any offense which is the object of the conspiracy.

A person convicted of a second or subsequent offense under this section would be sentenced

to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant would not be eligible for parole.

SECTION 5, ADDITIONAL PENALTIES TO FUND LAW ENFORCEMENT ACTIVITIES. The bill provides for additional monetary penalties for offenses involving the taking of property by a fiduciary, leader of a cargo theft network or operating a facility for the sale or storage of property stolen from a cargo carrier, as follows:

- for a crime of the third degree, a penalty of \$500;
- for a crime of the second degree, a penalty of \$2,500; and
- for a crime of the first degree or any crime where the person to be sentenced has a prior conviction for any theft crime, a penalty of \$5,000.

All penalties provided for in this section would be distributed in accordance with the provisions of N.J.S.2C:64-6 (forfeiture). However, the bill provides that the distributed monies are first to be considered for use for law enforcement activities related to theft from a cargo carrier.

SECTION 6, NEW CRIME: OPERATING PREMISES FOR STORAGE OF STOLEN CARGO. The bill creates the crime of maintaining or operating any premises, place or facility used for the storage or resale of any property stolen from a cargo carrier. Under the bill, it is a crime of the second degree if the property involved in the offense is valued at \$50,000 or more. Otherwise, the offense is a crime of the third degree. Under the provisions of the bill, the court may impose a fine not to exceed \$250,000 or five times the retail value of the property stolen from the carrier seized at the time of the arrest, whichever is greater.

A person convicted of a second or subsequent offense under this section would be sentenced to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant would not be eligible for parole.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services states that since the bill creates new crimes and new fines there is no data available to determine the number of offenders who would be convicted of these crimes or the amount of fine revenue that would be collected. As a result, neither the potential cost of incarceration of offenders nor the amount of additional fine revenue can be estimated.

Section: *Judiciary*

Analyst: *Anne Raughley*
 Principal Fiscal Analyst

Approved: *David J. Rosen*
 Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3003

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 7, 2012

Sponsored by:

Assemblywoman CAROLINE CASAGRANDE

District 11 (Monmouth)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblyman ALBERT COUTINHO

District 29 (Essex)

Assemblyman DAVID P. RIBLE

District 30 (Monmouth and Ocean)

Co-Sponsored by:

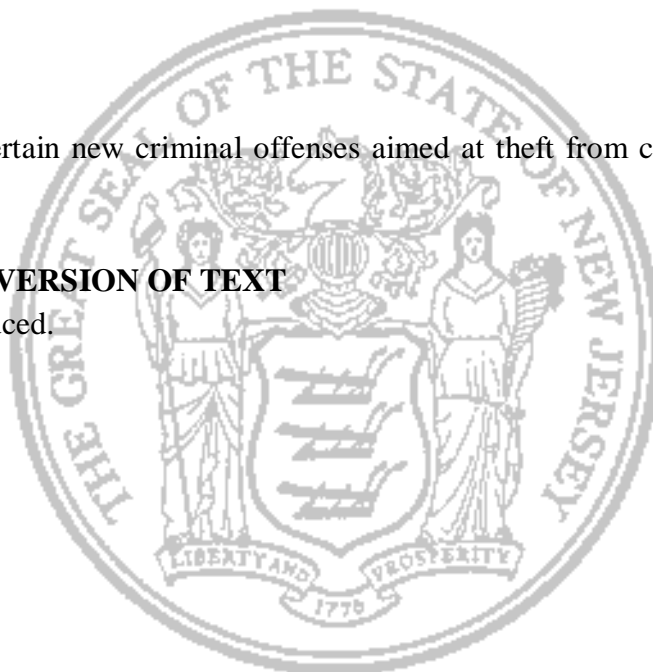
Assemblyman C.A.Brown, Assemblywoman Schepisi, Assemblymen Rudder, Chiusano, McGuckin, Assemblywomen B.DeCroce, Angelini, Simon, Assemblymen Clifton, Webber, A.M.Bucco, Assemblywoman Gove, Assemblymen Rumpf, Carroll, Ciattarelli, Caputo, McKeon, Assemblywoman McHose, Assemblyman Rumana and Assemblywoman Quijano

SYNOPSIS

Creates certain new criminal offenses aimed at theft from carriers; amends theft statutes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2012)

1 AN ACT concerning criminal penalties for offenses related to theft
2 from a carrier, amending N.J.S. 2C:20-1 and N.J.S. 2C:20-7 and
3 supplementing Title 2C of the New Jersey 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:20-1 is amended to read as follows:
9 2C:20-1. Definitions. In chapters 20 and 21, unless a different
10 meaning plainly is required:

11 a. "Deprive" means: (1) to withhold or cause to be withheld
12 property of another permanently or for so extended a period as to
13 appropriate a substantial portion of its economic value, or with
14 purpose to restore only upon payment of reward or other
15 compensation; or (2) to dispose or cause disposal of the property so
16 as to make it unlikely that the owner will recover it.

17 b. "Fiduciary" means an executor, general administrator of an
18 intestate, administrator with the will annexed, substituted
19 administrator, guardian, substituted guardian, trustee under any
20 trust, express, implied, resulting or constructive, substituted trustee,
21 executor, conservator, curator, receiver, trustee in bankruptcy,
22 assignee for the benefit of creditors, partner, agent or officer of a
23 corporation, public or private, temporary administrator,
24 administrator, administrator pendente lite, administrator ad
25 prosequendum, administrator ad litem or other person acting in a
26 similar capacity. "Fiduciary" shall include an employee of, an
27 agent of, or independant contractor with a carrier as defined in
28 subsection w. of this section and the employee, agent or
29 subcontractor shall be considered to be acting in the capacity of a
30 fiduciary of the carrier employee.

31 c. "Financial institution" means a bank, insurance company,
32 credit union, savings and loan association, investment trust or other
33 organization held out to the public as a place of deposit of funds or
34 medium of savings or collective investment.

35 d. "Government" means the United States, any state, county,
36 municipality, or other political unit, or any department, agency or
37 subdivision of any of the foregoing, or any corporation or other
38 association carrying out the functions of government.

39 e. "Movable property" means property the location of which
40 can be changed, including things growing on, affixed to, or found in
41 land, and documents, although the rights represented thereby have
42 no physical location. "Immovable property" is all other property.

43 f. "Obtain" means: (1) in relation to property, to bring about a
44 transfer or purported transfer of a legal interest in the property,

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 whether to the obtainer or another; or (2) in relation to labor or
2 service, to secure performance thereof.

3 g. "Property" means anything of value, including real estate,
4 tangible and intangible personal property, trade secrets, contract
5 rights, choses in action and other interests in or claims to wealth,
6 admission or transportation tickets, captured or domestic animals,
7 food and drink, electric, gas, steam or other power, financial
8 instruments, information, data, and computer software, in either
9 human readable or computer readable form, copies or originals.

10 h. "Property of another" includes property in which any person
11 other than the actor has an interest which the actor is not privileged
12 to infringe, regardless of the fact that the actor also has an interest
13 in the property and regardless of the fact that the other person might
14 be precluded from civil recovery because the property was used in
15 an unlawful transaction or was subject to forfeiture as contraband.
16 Property in possession of the actor shall not be deemed property of
17 another who has only a security interest therein, even if legal title is
18 in the creditor pursuant to a conditional sales contract or other
19 security agreement.

20 i. "Trade secret" means the whole or any portion or phase of
21 any scientific or technical information, design, process, procedure,
22 formula or improvement which is secret and of value. A trade
23 secret shall be presumed to be secret when the owner thereof takes
24 measures to prevent it from becoming available to persons other
25 than those selected by the owner to have access thereto for limited
26 purposes.

27 j. "Dealer in property" means a person who buys and sells
28 property as a business.

29 k. "Traffic" means:

30 (1) To sell, transfer, distribute, dispense or otherwise dispose of
31 property to another person; or

32 (2) To buy, receive, possess, or obtain control of or use
33 property, with intent to sell, transfer, distribute, dispense or
34 otherwise dispose of such property to another person.

35 l. "Broken succession of title" means lack of regular
36 documents of purchase and transfer by any seller except the
37 manufacturer of the subject property, or possession of documents of
38 purchase and transfer by any buyer without corresponding
39 documents of sale and transfer in possession of seller, or possession
40 of documents of sale and transfer by seller without corresponding
41 documents of purchase and transfer in possession of any buyer.

42 m. "Person" includes any individual or entity or enterprise, as
43 defined herein, holding or capable of holding a legal or beneficial
44 interest in property.

45 n. "Anything of value" means any direct or indirect gain or
46 advantage to any person.

47 o. "Interest in property which has been stolen" means title or
48 right of possession to such property.

- 1 p. "Stolen property" means property that has been the subject
2 of any unlawful taking.
- 3 q. "Enterprise" includes any individual, sole proprietorship,
4 partnership, corporation, business trust, association, or other legal
5 entity, and any union or group of individuals associated in fact,
6 although not a legal entity, and it includes illicit as well as licit
7 enterprises and governmental as well as other entities.
- 8 r. "Attorney General" includes the Attorney General of New
9 Jersey, his assistants and deputies. The term shall also include a
10 county prosecutor or his designated assistant prosecutor, if a county
11 prosecutor is expressly authorized in writing by the Attorney
12 General to carry out the powers conferred on the Attorney General
13 by this chapter.
- 14 s. "Access device" means property consisting of any telephone
15 calling card number, credit card number, account number, mobile
16 identification number, electronic serial number, personal
17 identification number, or any other data intended to control or limit
18 access to telecommunications or other computer networks in either
19 human readable or computer readable form, either copy or original,
20 that can be used to obtain telephone service. Access device also
21 means property consisting of a card, code or other means of access
22 to an account held by a financial institution, or any combination
23 thereof, that may be used by the account holder for the purpose of
24 initiating electronic fund transfers.
- 25 t. "Defaced access device" means any access device, in either
26 human readable or computer readable form, either copy or original,
27 which has been removed, erased, defaced, altered, destroyed,
28 covered or otherwise changed in any manner from its original
29 configuration.
- 30 u. "Domestic companion animal" means any animal commonly
31 referred to as a pet or one that has been bought, bred, raised or
32 otherwise acquired, in accordance with local ordinances and State
33 and federal law for the primary purpose of providing
34 companionship to the owner, rather than for business or agricultural
35 purposes.
- 36 v. "Personal identifying information" means any name, number
37 or other information that may be used, alone or in conjunction with
38 any other information, to identify a specific individual and includes,
39 but is not limited to, the name, address, telephone number, date of
40 birth, social security number, official State issued identification
41 number, employer or taxpayer number, place of employment,
42 employee identification number, demand deposit account number,
43 savings account number, credit card number, mother's maiden
44 name, unique biometric data, such as fingerprint, voice print, retina
45 or iris image or other unique physical representation, or unique
46 electronic identification number, address or routing code of the
47 individual.
- 48 w. "Carrier" means: (1) any business or establishment primarily

1 operating for the purpose of conveying goods, property or
2 passengers for compensation from one place to another by road,
3 highway, rail, water or air, including but not limited to any pipeline
4 system, railroad car, motortruck, truck, trailer, semi-trailer,
5 commercial motor vehicle or other vehicle, any steamboat, vessel or
6 aircraft; including the storage and warehousing of goods and
7 property, including, but not limited to any tank or storage facility,
8 warehouse, terminal, station, station house, platform, depot, wharf,
9 pier, or from any ocean, intermodal, container freight station or
10 freight consolidation facility; or (2) any business or establishment
11 that conveys goods or property which it owns or has title to, from
12 one place to another, by road, highway, rail, water or air including
13 the storage and warehousing of goods and property incidental to
14 their conveyance from one place to another including baggage.
15 (cf: P.L. 2004, c.11)

16

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

18 2C:20-7. Receiving Stolen Property.

19 a. Receiving. A person is guilty of theft if he knowingly
20 receives or brings into this State movable property of another
21 knowing that it has been stolen, or believing that it is probably
22 stolen. It is an affirmative defense that the property was received
23 with purpose to restore it to the owner. "Receiving" means
24 acquiring possession, control or title, or lending on the security of
25 the property.

26 b. Presumption of knowledge. The requisite knowledge or
27 belief is presumed in the case of a person who:

28 (1) Is found in possession or control of two or more items of
29 property stolen on two or more separate occasions; or

30 (2) Has received stolen property in another transaction within
31 the year preceding the transaction charged; or

32 (3) Being a person in the business of buying or selling property
33 of the sort received, acquires the property without having
34 ascertained by reasonable inquiry that the person from whom he
35 obtained it had a legal right to possess and dispose of it; or

36 (4) Is found in possession of two or more defaced access
37 devices; or

38 (5) Is found in possession of property of a carrier without proper
39 documentation, satisfactory explanation or other evidence of right
40 to possession.

41 (cf: P.L.1997, c.6, s.3)

42

43 3. (New section) a. Notwithstanding the provisions of
44 subparagraph (e) of paragraph (2) of subsection b. of N.J.S.2C:20-2,
45 a person who commits theft from a carrier in breach of his
46 obligation in his capacity as a fiduciary is guilty of a crime of the
47 second degree. If, in the course of committing the theft, the actor
48 attempts to kill anyone, or purposely inflicts or attempts to inflict

1 serious bodily injury, or is armed with, or uses or threatens the use
2 of a deadly weapon, he is guilty of a crime of the first degree. As
3 used herein, "deadly weapon" means any firearm or other weapon,
4 device, instrument, material or substance, whether animate or
5 inanimate, which in the manner it is used or is intended to be used,
6 is known to be capable of producing death or serious bodily injury
7 or which in the manner it is fashioned would lead the victim
8 reasonably to believe it to be capable of producing death or serious
9 bodily injury.

10 b. (1) A person convicted of a second or subsequent offense in
11 breach of his obligation in his capacity as a fiduciary under this
12 section shall be sentenced to a term of imprisonment that shall
13 include, unless the person is sentenced pursuant to the provisions of
14 N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half
15 of the sentence imposed, or two years, whichever is greater, during
16 which time the defendant shall not be eligible for parole. If the
17 person is sentenced pursuant to N.J.S.2C:43-7, the court shall
18 impose a minimum term of one-third to one-half of the sentence
19 imposed, or three years, whichever is greater. The court may not
20 suspend or make any other non-custodial disposition of any person
21 sentenced as a second or subsequent offender pursuant to this
22 section. For the purposes of this section an offense is considered a
23 second or subsequent offense if the actor has at any time been
24 convicted pursuant to this section, or under any similar statute of
25 the United States, this State or any other state for an offense that is
26 substantially equivalent to this section.

27 (2) A person convicted of a second or subsequent offense in
28 breach of his obligation in his capacity as a fiduciary under this
29 section who, while in the course of committing the theft, used or
30 threatened the use of any weapon, as defined in N.J.S.2C:39-1, shall
31 be sentenced to a term of imprisonment that shall include, unless
32 the person is sentenced pursuant to the provisions of N.J.S.2C:43-7,
33 a mandatory minimum term of one-third to one-half of the sentence
34 imposed, or four years, whichever is greater, during which time the
35 defendant shall not be eligible for parole. If the person is sentenced
36 pursuant to N.J.S.2C:43-7, the court shall impose a minimum term
37 of one-third to one-half of the sentence imposed, or six years,
38 whichever is greater. The court may not suspend or make any other
39 non-custodial disposition of any person sentenced as a second or
40 subsequent offender pursuant to this section. For the purposes of
41 this section an offense is considered a second or subsequent offense
42 if the actor has at any time been convicted pursuant to this section,
43 or under any similar statute of the United States, this State or any
44 other state for an offense that is substantially equivalent to this
45 section.

46
47 4. (New section) a. A person is a leader of a theft of carrier
48 property network if he conspires with others as an organizer,

1 supervisor, financier or manager to engage for profit in a scheme or
2 course of conduct to unlawfully take, dispose of, distribute, bring
3 into or transport in this State property stolen from a carrier.

4 (1) Except as provided in paragraph (2) of this subsection,
5 leader of a theft of carrier property network is a crime of the second
6 degree. Notwithstanding the provisions of subsection a. of
7 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
8 or five times the retail value of the property seized at the time of the
9 arrest, whichever is greater.

10 (2) Leader of a theft of carrier property network is a crime of the
11 first degree if the scheme or course of conduct to unlawfully take,
12 dispose of, distribute, bring into or transport in this State property
13 stolen from a carrier was conducted with the use or threatened use
14 of any weapon, as defined in N.J.S.2C:39-1.

15 b. Notwithstanding the provisions of N.J.S.2C:1-8, a
16 conviction of leader of a theft of carrier property network shall not
17 merge with the conviction for any offense which is the object of the
18 conspiracy. Nothing contained in this act shall prohibit the court
19 from imposing an extended term pursuant to N.J.S.2C:43-7; nor
20 shall this act be construed in any way to preclude or limit the
21 prosecution or conviction of any person for conspiracy under
22 N.J.S.2C:5-2, or any prosecution or conviction for any other
23 offense.

24 c. It shall not be necessary in any prosecution under this act for
25 the State to prove that any intended profit was actually realized.
26 The trier of fact may infer that a particular scheme or course of
27 conduct was undertaken for profit from all of the attending
28 circumstances, including but not limited to the number of persons
29 involved in the scheme or course of conduct, the actor's net worth
30 and his expenditures in relation to his legitimate sources of income,
31 the amount of property or number of incidents of theft, or the
32 amount of cash or currency involved.

33 d. It shall not be a defense to a prosecution under this act that
34 the stolen property was brought into or transported in this State
35 solely for ultimate distribution in another jurisdiction; nor shall it be
36 a defense that any profit was intended to be made in another
37 jurisdiction.

38 e. A person convicted of a second or subsequent offense under
39 this section shall be sentenced to a term of imprisonment that shall
40 include, unless the person is sentenced pursuant to the provisions of
41 N.J.S. 2C:43-7, a mandatory minimum term of one-third to one-half
42 of the sentence imposed, or two years, whichever is greater, during
43 which time the defendant shall not be eligible for parole. If the
44 person is sentenced pursuant to N.J.S.2C:43-7, the court shall
45 impose a minimum term of one-third to one-half of the sentence
46 imposed, or three years, whichever is greater. The court may not
47 suspend or make any other non-custodial disposition of any person
48 sentenced as a second or subsequent offender pursuant to this

1 section. For the purposes of this section an offense is considered a
2 second or subsequent offense if the actor has at any time been
3 convicted pursuant to this section, or under any similar statute of
4 the United States, this State or any other state for an offense that is
5 substantially equivalent to this section.

6 f. It shall be a rebuttable presumption that a person convicted
7 as leader of a theft of carrier property network authorized the use or
8 threatened use of a weapon, as defined in N.J.S.2C:39-1 and,
9 notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
10 the court may impose a fine not to exceed \$500,000 or five times
11 the retail value of the property seized at the time of the arrest,
12 whichever is greater.

13

14 5. (New section) a. A person convicted under the provisions
15 of chapter 20 of Title 2C of the New Jersey Statutes of theft or
16 unlawful taking of property from a carrier shall be subject,
17 notwithstanding the terms of imprisonment provided in
18 N.J.S.2C:43-6 or N.J.S.2C:43-8, to a minimum term of
19 imprisonment of not less than 120 days for the second offense and
20 to a minimum term of imprisonment of not less than 270 days for a
21 third or subsequent offense.

22 b. A person convicted under the provisions of chapter 20 of
23 Title 2C of the New Jersey Statutes of theft or unlawful taking of
24 property from a carrier who, while in the course of committing the
25 theft, used or threatened the use of a deadly weapon, as defined in
26 section 3 of P.L. c. (C.) (pending before the Legislature as
27 section 3 of this bill), shall be subject, notwithstanding the terms of
28 imprisonment provided in N.J.S.2C:43-6 or N.J.S.2C:43-8, to a
29 minimum term of imprisonment of not less than 240 days for the
30 second offense and to a minimum term of imprisonment of not less
31 than 540 days for a third or subsequent offense.

32

33 6. (New section) a. In addition to any other disposition
34 authorized by law, a person convicted under the provisions of
35 chapter 20 of Title 2C of the New Jersey Statutes of theft or
36 unlawful taking of property from a carrier, including leader of a
37 theft of carrier property network and operating a facility for the sale
38 of property stolen from a carrier, shall, except as provided in
39 subsection c., be subject:

40 (1) For the first offense, to a penalty of \$500;

41 (2) For the second offense, to a penalty of \$1,000; and

42 (3) For a third or subsequent offense, to a penalty of \$2,000.

43 b. In addition to any other disposition authorized by law, a
44 person convicted under the provisions of chapter 20 of Title 2C of
45 the New Jersey Statutes of theft or unlawful taking of property from
46 a carrier, including leader of a theft of carrier property network
47 who, while in the course of committing the theft, used or threatened
48 the use of a weapon, as defined in N.J.S.2C:39-1, shall be subject:

- 1 (1) For the first offense, to a penalty of \$1,000;
- 2 (2) For the second offense, to a penalty of \$2,000; and
- 3 (3) For a third or subsequent offense, to a penalty of \$4,000.
- 4 c. All penalties provided for in this section shall be collected as
- 5 provided for the collection of fines and restitutions in section 3 of
- 6 P.L.1979, c.396 (C.2C:46-4), and shall be distributed in accordance
- 7 with the provisions of N.J.S.2C:64-6 as if the collected monies were
- 8 the proceeds of property forfeited pursuant to the provisions of
- 9 chapter 64 of Title 2C of the New Jersey Statutes. However, the
- 10 distributed monies are to be used for law enforcement activities
- 11 related to theft from a carrier.
- 12
- 13 7. (New section) The offenses of theft or unlawful taking of
- 14 property from a carrier shall be deemed to have been committed not
- 15 only in the county where the violation first occurred, but also in any
- 16 county into which the defendant may have taken or been in
- 17 possession of any money, baggage, goods or property of a carrier.
- 18
- 19 8. (New section) a. A person who knowingly maintains or
- 20 operates any premises, place or facility used for the storage or
- 21 resale of any property stolen from a carrier is guilty of a crime of
- 22 the second degree.
- 23 b. Notwithstanding the provisions of subsection a. of
- 24 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
- 25 or five times the retail value of the property stolen from the carrier
- 26 seized at the time of the arrest, whichever is greater.
- 27 c. A person convicted of a second or subsequent offense under
- 28 this section shall be sentenced to a term of imprisonment that shall
- 29 include, unless the person is sentenced pursuant to the provisions of
- 30 N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half
- 31 of the sentence imposed, or two years, whichever is greater, during
- 32 which time the defendant shall not be eligible for parole. If the
- 33 person is sentenced pursuant to N.J.S.2C:43-7, the court shall
- 34 impose a minimum term of one-third to one-half of the sentence
- 35 imposed, or three years, whichever is greater. The court may not
- 36 suspend or make any other non-custodial disposition of any person
- 37 sentenced as a second or subsequent offender pursuant to this
- 38 section. For the purposes of this section an offense is considered a
- 39 second or subsequent offense if the actor has at any time been
- 40 convicted pursuant to this section, or under any similar statute of
- 41 the United States, this State or any other state for an offense that is
- 42 substantially equivalent to this section.
- 43
- 44 9. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

This bill adds a definition of "carrier" to the chapter on theft offenses and makes certain specific provisions for these type of theft offenses. The bill includes employees, agents or subcontractors of carriers within the definition of "fiduciary." The bill adds a presumption that property is stolen if the person is lacking proper documentation for the cargo, satisfactory explanation or other evidence of right to possession.

Under the bill, a person who commits theft from a carrier in breach of his obligation in his capacity as a fiduciary shall be convicted of a crime of the second degree. If, in the course of committing the theft, he attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with, or uses or threatens the use of a deadly weapon, he is guilty of a crime of the first degree. As used in the bill, "deadly weapon" means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury, he is guilty of a crime of the first degree.

In addition, the bill creates the second degree crimes of leader of a theft of carrier property network, maintaining or operating any premises, place or facility used for a carrier's stolen property and the first degree crime of leader of a theft of carrier property network, if the scheme or course of conduct to unlawfully take, dispose of, distribute, bring into or transport in this State property stolen from a carrier was conducted with the use or threatened use of any weapon. Upon conviction, the court may impose a fine equal to five times the value of the property seized at the time of arrest or \$250,000 for a crime of the second degree and \$500,000 for a crime of the first degree, whichever is greater.

The bill provides that a person convicted of a second or subsequent offense in breach of his obligation as a fiduciary, leader of theft of carrier property network, or maintaining or operating any premises, place or facility used for stolen property shall face certain mandatory minimum terms of imprisonment.

The bill also provides that a person convicted of theft or unlawful taking of property from a carrier shall be subject to a minimum term of imprisonment of not less than 120 days for the second offense and not less than 270 days for a third or subsequent offense. If the crime was conducted with the use or threatened use of any weapon, the person shall be subject to a minimum term of imprisonment of not less than 240 days for the second offense and not less than 540 for a third or subsequent offense.

In addition, a person convicted of theft or unlawful taking of

1 property from a carrier, leader of a theft of carrier property network,
2 or operating a facility for sale of stolen carrier property shall be
3 subject to a \$500 penalty for a first offense, a \$1,000 penalty for a
4 second offense, and a \$2,000 penalty for a third or subsequent
5 offense. If the offense involved the use or threatened use of a
6 weapon, the person shall be subject to a \$1,000 penalty for a first
7 offense, a \$2,000 penalty for a second offense, and a \$4,000 penalty
8 for a third or subsequent offense.

9 This bill is intended to discourage theft from carriers which has
10 been a growing problem in this State as it has been in most other
11 parts of this country. The FBI has estimated that over \$6 billion
12 worth of cargo is stolen in this country every year. The cost of this
13 theft is borne by every citizen in the increased price we must pay
14 for goods and transportation services. New Jersey is one of the
15 busiest centers of commerce in this county. Our ports, our airports,
16 our rail facilities, our roads and highways and the facilities serving
17 our motor carrier industry have become key targets for such theft.
18 This bill attempts to provide proper recourse against those
19 responsible, especially the leaders of network organizations
20 involved in such crimes and the employees of carriers who
21 participate in such crimes.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3003

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2012

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3003.

This bill creates new criminal offenses aimed at theft from cargo carriers. As amended by the committee is designated as Lieutenant Scott Jenkins' Law.

Under the bill, a person who commits theft from a cargo carrier in breach of an obligation in his capacity as a fiduciary is guilty of a crime.

SECTION 1, DEFINITIONS. As amended, the bill expands the current definition of "fiduciary" in N.J.S.2C:20-1 to provide that the term shall also include an employee or an agent of a cargo carrier, while acting in that capacity, or an independent contractor providing services to a cargo carrier as that term is defined in the section.

The bill also adds the new term "cargo carrier" to N.J.S.2C:20-1. As amended by the committee, the term is defined as: (1) any business or establishment regularly operating for the purpose of conveying goods or property for compensation from one place to another by road, highway, rail, water or air, by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and any business or establishment regularly engaged in the temporary storage of goods or property incident to further distribution of the goods or property elsewhere for commercial purposes, including but not limited to businesses or establishments operating a tank or storage facility, warehouse, terminal, station, station house, platform, depot, wharf, pier, or from any ocean, intermodal, container freight station or freight consolidation facility; or (2) any business or establishment that conveys goods or property which it owns or has title to, from one place to another, by road, highway, rail, water or air by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and including the storage and warehousing of goods and property incidental to their conveyance from one place to another.

SECTION 2, THEFT GENERALLY. The committee amended the bill to add a new section amending N.J.S.2C:20-2, the general theft offenses statute. Currently it is a crime of the third degree if a theft is in breach of an obligation by a person in his capacity as a fiduciary. Under the amendments it would be a crime of the second degree if the theft involves a breach of an obligation by a person in his capacity as a fiduciary and the amount involved is \$50,000 or more. It would be a crime of third degree if it was a breach of an obligation by a fiduciary and the amount involved is less than \$50,000.

SECTION 3, RECEIVING STOLEN PROPERTY. As introduced, the bill amends N.J.S.2C:20-7, Receiving Stolen Property, to add a presumption that a person is guilty of theft if he is found in possession of property of a cargo carrier without proper documentation, satisfactory explanation or other evidence of right to possession. The committee amended this section to remove the term "satisfactory explanation" because in the view of the committee the term is unclear. As amended, the bill sets out a presumption that a person is guilty of theft if he is found in possession of property of a cargo carrier without proper documentation or other evidence of right to possession.

The committee deleted the original section 3 of the bill which made it a crime of the first degree to inflict bodily injury or kill anyone in the course of committing the theft.

SECTION 4, NEW CRIME: LEADER OF A CARGO THEFT NETWORK.

The bill creates the crime of "leader of a cargo theft network." As amended, a person is a leader of a cargo theft network if he conspires with others as an organizer, supervisor, financier or manager to engage for profit in a scheme or course of conduct to unlawfully take, dispose of, distribute, bring into, transport or store in this State property stolen from a cargo carrier where the amount is at least \$5,000. Leader of a cargo theft network is a crime of the first degree if in the commission of the theft the person used or threatened to use a deadly weapon. Otherwise, it is a crime of the second degree.

A crime of the first degree is generally punishable by a term of imprisonment of 10 to 20 years, a fine of \$200,000 or both. However, under the bill the court may impose a fine not to exceed \$500,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the first degree crime of leader of a cargo theft network. A crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000 or both. Under the bill the court may impose a fine not to exceed \$250,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the second degree crime of leader of a cargo theft network.

The bill as amended provides that it shall not be deemed to limit the authority or discretion of the State to charge or prosecute any person for robbery or for any other offense, nor shall a conviction for robbery merge with any conviction for leader of a cargo theft network. The bill also provides that a conviction of leader of a cargo theft

network could not merge with the conviction for any offense which is the object of the conspiracy.

A person convicted of a second or subsequent offense under this section would be sentenced to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant would not be eligible for parole.

The committee deleted the original section 5 of the bill which created the offense of theft or unlawful taking of property from a carrier.

SECTION 5, ADDITIONAL PENALTIES TO FUND LAW ENFORCEMENT ACTIVITIES. As amended, the bill provides for additional monetary penalties for offenses involving the taking of property by a fiduciary, leader of a cargo theft network or operating a facility for the sale or storage of property stolen from a cargo carrier, as follows:

- for a crime of the third degree , to a penalty of \$500;
- for a crime of the second degree, to a penalty of \$2,500; and
- for a crime of the first degree or any crime where the person to be sentenced has a prior conviction for any theft crime, to a penalty of \$5,000.

All penalties provided for in this section would be distributed in accordance with the provisions of N.J.S.2C:64-6 (forfeiture). However, the bill provides that the distributed monies are first to be considered for use for law enforcement activities related to theft from a cargo carrier.

SECTION 6, NEW CRIME: OPERATING PREMISES FOR STORAGE OF STOLEN CARGO. The bill creates the crime of maintaining or operating any premises, place or facility used for the storage or resale of any property stolen from a cargo carrier. As amended, it is a crime of the second degree if the property involved in the offense is valued at \$50,000 or more. Otherwise, the offense is a crime of the third degree. Under the provisions of the bill, the court may impose a fine not to exceed \$250,000 or five times the retail value of the property stolen from the carrier seized at the time of the arrest, whichever is greater.

A person convicted of a second or subsequent offense under this section would be sentenced to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant would not be eligible for parole.

The committee deleted the original section 7 of the bill which concerned jurisdiction between counties.

The bill is named for Lieutenant Scott Jenkins, a founding member of the State Police Cargo Theft and Robbery Unit, who passed away in 2003.

COMMITTEE AMENDMENTS:

- (1) The title of the bill is amended to designate the bill as Lieutenant Scott Jenkins' Law and to add a reference to N.J.S.2C:20-2.

- (2) Section 1 of the bill is amended to clarify the definition of “fiduciary” and “cargo carrier.”
- (3) Section 2 is amended to upgrade theft by a fiduciary. It would be a crime of the second degree if the amount involved is \$50,000. Otherwise, it would be a crime of the third degree.
- (4) Omit the original section 3 of the bill.
- (5) Amend new section 3 to remove the grounds “satisfactory explanation” from the presumption under receiving stolen property.
- (6) Amend section 4 concerning leader of a cargo theft network to specify that the amount involved must be at least \$5,000 for a person to be guilty of this crime. Adds non-merger provision. Clarifies that the fine for the first degree crime of leader of a cargo theft network (with a deadly weapon) is \$500,000 or five times the retail value of the property. Otherwise, leader of a cargo theft network is a crime of the second degree. Clarifies the mandatory minimum terms for second or subsequent offenses.
- (7) Omit the original section 5 of the bill.
- (8) Increase the additional monetary penalties in section 5 for the taking of property by a fiduciary, leader of cargo theft network, and operating a facility.
- (9) Amend section 6 concerning maintaining or operating premises for storage or resale of property stolen from cargo carrier to make it a crime of the second degree if the property involved in the offense is valued at \$50,000 or more. Otherwise, the offense is a crime of the third degree. Clarifies the mandatory minimum terms for second or subsequent offenses.
- (10) Omit the original section 7 of the bill.
- (11) Renumber sections 9 as section 7.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3003

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2013

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3003 (1R).

This bill concerns criminal offenses related to theft from a cargo carrier. The bill is designated as Lieutenant Scott Jenkins' Law in honor of Lieutenant Scott Jenkins who was a founding member of the State Police Cargo Theft and Robbery Unit.

SECTION 1, DEFINITIONS. The bill expands the definition of "fiduciary" in N.J.S.2C:20-1 to provide that the term also will include an employee or an agent of a cargo carrier, while acting in that capacity, or an independent contractor providing services to a cargo carrier as that term is defined by the section.

The bill adds the term "cargo carrier" to N.J.S.2C:20-1. For purposes of the bill, "cargo carrier" is defined as: (1) any business or establishment regularly operating for the purpose of conveying goods or property for compensation from one place to another by road, highway, rail, water or air, by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and any business or establishment regularly engaged in the temporary storage of goods or property incident to further distribution of the goods or property elsewhere for commercial purposes, including but not limited to businesses or establishments operating a tank or storage facility, warehouse, terminal, station, station house, platform, depot, wharf, pier, or from any ocean, intermodal, container freight station or freight consolidation facility; or (2) any business or establishment that conveys goods or property which it owns or has title to, from one place to another, by road, highway, rail, water or air by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and including the storage and warehousing of goods and property incidental to their conveyance from one place to another.

SECTION 2, THEFT GENERALLY. The bill amends N.J.S.2C:20-2, the general theft offenses statute. Currently, it is a crime of the third degree if a theft is in breach of an obligation by a person in his

capacity as a fiduciary. Under the bill, it is a crime of the second degree if the theft involves a breach of an obligation by a person in his capacity as a fiduciary and the amount involved is \$50,000 or more. The bill provides that it is a crime of the third degree if the theft was a breach of an obligation by a fiduciary and the amount involved is less than \$50,000.

SECTION 3, RECEIVING STOLEN PROPERTY. The bill amends N.J.S.2C:20-7, Receiving Stolen Property, to add a presumption that a person is guilty of theft if the person is found in possession of property of a cargo carrier without proper documentation or other evidence of right to possession.

SECTION 4, NEW CRIME: LEADER OF A CARGO THEFT NETWORK. The bill creates the crime of “leader of a cargo theft network.” Under the bill, a person is a leader of a cargo theft network if the person conspires with others as an organizer, supervisor, financier or manager to engage for profit in a scheme or course of conduct to unlawfully take, dispose of, distribute, bring into, transport or store in this State property stolen from a cargo carrier where the amount is at least \$5,000. The bill provides that leader of a cargo theft network is a crime of the first degree if in the commission of the theft the person used or threatened to use a deadly weapon. Otherwise, the bill provides that leader of a cargo theft network is a crime of the second degree.

A crime of the first degree is generally punishable by a term of imprisonment of 10 to 20 years, a fine of \$200,000 or both. However, under the bill the court may impose a fine not to exceed \$500,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the first degree crime of leader of a cargo theft network.

A crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000 or both. Under the bill, the court may impose a fine not to exceed \$250,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the second degree crime of leader of a cargo theft network.

The bill provides that the creation of the crime of leader of a cargo theft network will not be deemed to limit the authority or discretion of the State to charge or prosecute any person for robbery or for any other offense, nor will a conviction for robbery merge with any conviction for leader of a cargo theft network. The bill also provides that a conviction of leader of a cargo theft network cannot merge with the conviction for any offense which is the object of the conspiracy.

The bill provides that a person convicted of a second or subsequent offense under this section will be sentenced to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant will not be eligible for parole.

SECTION 5, ADDITIONAL PENALTIES TO FUND LAW ENFORCEMENT ACTIVITIES. The bill provides that persons convicted of offenses

involving the taking of property by a fiduciary, leader of a cargo theft network or operating a facility for the sale or storage of property stolen from a cargo carrier will be subject to additional monetary penalties, as follows:

- for a crime of the third degree, a penalty of \$500;
- for a crime of the second degree, a penalty of \$2,500; and
- for a crime of the first degree or any crime where the person to be sentenced has a prior conviction for any theft crime, a penalty of \$5,000.

The bill provides that all additional penalties provided for in this section will be distributed in accordance with N.J.S.2C:64-6 (forfeiture). However, the bill provides that the distributed monies are first to be considered for use for law enforcement activities related to theft from a cargo carrier.

SECTION 6, NEW CRIME: OPERATING PREMISES FOR STORAGE OF STOLEN CARGO. The bill creates the crime of maintaining or operating any premises, place or facility used for the storage or resale of any property stolen from a cargo carrier. The bill provides that it is a crime of the second degree if the property involved in the offense is valued at \$50,000 or more. Otherwise, the bill provides that the offense is a crime of the third degree. Under the bill, the court may impose a fine not to exceed \$250,000 or five times the retail value of the property stolen from the carrier seized at the time of the arrest, whichever is greater.

The bill provides that a person convicted of a second or subsequent offense under this section will be sentenced to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant will not be eligible for parole.

SECTION 7, EFFECTIVE DATE. The bill takes effect immediately upon enactment.

FISCAL IMPACT:

The Office of Legislative Services notes that the fiscal impact of this bill cannot be determined because it lacks sufficient data to determine the number of offenders who may be convicted of the new crimes established by the bill or the amount of additional revenue that may be generated by the State from the new penalties it imposes.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3003

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: FEBRUARY 11, 2013

SUMMARY

- Synopsis:** Lieutenant Scott Jenkins' Law; creates certain new criminal offenses aimed at theft from cargo carriers; amends theft statutes.
- Type of Impact:** General Fund expenditure, Fine revenue.
- Agencies Affected:** Judiciary, Department of Corrections

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below.		
State Revenue	Indeterminate – See comments below.		

- The Office of Legislative Services states that since the bill creates new crimes and new fines there is no data available to determine the number of offenders who would be convicted of these crimes or the amount of fine revenue that would be collected. As a result, the potential cost and/or revenue cannot be estimated.
- The bill, designated as Lieutenant Scott Jenkins' Law, creates new criminal offenses aimed at theft from cargo carriers. Under the bill, a person who commits theft from a cargo carrier in breach of an obligation in his capacity as a fiduciary is guilty of a crime.

BILL DESCRIPTION

Assembly Bill No. 3003 (1R) of 2012, designated as Lieutenant Scott Jenkins' Law, creates new criminal offenses aimed at theft from cargo carriers.

Under the bill, a person who commits theft from a cargo carrier in breach of an obligation in his capacity as a fiduciary is guilty of a crime.

SECTION 1, DEFINITIONS. The bill expands the current definition of "fiduciary" in N.J.S.2C:20-1 to provide that the term shall also include an employee or an agent of a cargo carrier, while acting in that capacity, or an independent contractor providing services to a cargo carrier.

The bill also adds the new term “cargo carrier” to N.J.S.2C:20-1. The term is defined as: (1) any business or establishment regularly operating for the purpose of conveying goods or property for compensation from one place to another by road, highway, rail, water or air, by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and any business or establishment regularly engaged in the temporary storage of goods or property incidental to further distribution of the goods or property elsewhere for commercial purposes, including but not limited to businesses or establishments operating a tank or storage facility, warehouse, terminal, station, station house, platform, depot, wharf, pier, or from any ocean, intermodal, container freight station or freight consolidation facility; or (2) any business or establishment that conveys goods or property which it owns or has title to, from one place to another, by road, highway, rail, water or air by any means including but not limited to any pipeline system, railroad car, motor truck, truck, trailer, semi-trailer, commercial motor vehicle or other vehicle, any steamboat, vessel or aircraft, and including the storage and warehousing of goods and property incidental to their conveyance from one place to another.

SECTION 2, THEFT GENERALLY. Currently it is a crime of the third degree if a theft is in breach of an obligation by a person in his capacity as a fiduciary. Under the bill it would be a crime of the second degree if the theft involves a breach of an obligation by a person in his capacity as a fiduciary and the amount involved is \$50,000 or more. It would be a crime of third degree if it was a breach of an obligation by a fiduciary and the amount involved is less than \$50,000.

SECTION 3, RECEIVING STOLEN PROPERTY. The bill amends N.J.S.2C:20-7, Receiving Stolen Property, to add a presumption that a person is guilty of theft if he is found in possession of property of a cargo carrier without proper documentation or other evidence of right to possession.

SECTION 4, NEW CRIME: LEADER OF A CARGO THEFT NETWORK.

The bill creates the crime of “leader of a cargo theft network.” A person is a leader of a cargo theft network if he conspires with others as an organizer, supervisor, financier or manager to engage for profit in a scheme or course of conduct to unlawfully take, dispose of, distribute, bring into, transport or store in this State property stolen from a cargo carrier where the amount is at least \$5,000. Leader of a cargo theft network is a crime of the first degree if in the commission of the theft the person used or threatened to use a deadly weapon. Otherwise, it is a crime of the second degree.

A crime of the first degree is generally punishable by a term of imprisonment of 10 to 20 years, a fine of \$200,000 or both. However, under the bill the court may impose a fine not to exceed \$500,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the first degree crime of leader of a cargo theft network. A crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000 or both. Under the bill the court may impose a fine not to exceed \$250,000 or five times the retail value of the property seized at the time of the arrest, whichever is greater, for the second degree crime of leader of a cargo theft network.

The bill provides that it shall not be deemed to limit the authority or discretion of the State to charge or prosecute any person for robbery or for any other offense, nor shall a conviction for robbery merge with any conviction for leader of a cargo theft network. The bill also provides that a conviction of leader of a cargo theft network could not merge with the conviction for any offense which is the object of the conspiracy.

A person convicted of a second or subsequent offense under this section would be sentenced to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant would not be eligible for parole.

SECTION 5, ADDITIONAL PENALTIES TO FUND LAW ENFORCEMENT ACTIVITIES. The bill provides for additional monetary penalties for offenses involving the taking of property by a fiduciary, leader of a cargo theft network or operating a facility for the sale or storage of property stolen from a cargo carrier, as follows:

- for a crime of the third degree, a penalty of \$500;
- for a crime of the second degree, a penalty of \$2,500; and
- for a crime of the first degree or any crime where the person to be sentenced has a prior conviction for any theft crime, a penalty of \$5,000.

All penalties provided for in this section would be distributed in accordance with the provisions of N.J.S.2C:64-6 (forfeiture). However, the bill provides that the distributed monies are first to be considered for use for law enforcement activities related to theft from a cargo carrier.

SECTION 6, NEW CRIME: OPERATING PREMISES FOR STORAGE OF STOLEN CARGO. The bill creates the crime of maintaining or operating any premises, place or facility used for the storage or resale of any property stolen from a cargo carrier. Under the bill, it is a crime of the second degree if the property involved in the offense is valued at \$50,000 or more. Otherwise, the offense is a crime of the third degree. Under the provisions of the bill, the court may impose a fine not to exceed \$250,000 or five times the retail value of the property stolen from the carrier seized at the time of the arrest, whichever is greater.

A person convicted of a second or subsequent offense under this section would be sentenced to a mandatory minimum term of one-third to one-half of the sentence imposed, during which time the defendant would not be eligible for parole.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services states that since the bill creates new crimes and new fines there is no data available to determine the number of offenders who would be convicted of these crimes or the amount of fine revenue that would be collected. As a result, neither the potential cost of incarceration of offenders nor the amount of additional fine revenue can be estimated.

Section: *Judiciary*

Analyst: *Anne Raughley*
 Principal Fiscal Analyst

Approved: *David J. Rosen*
 Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).