

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1270
Judiciary II (Criminal) Committee Substitute Adopted 5/8/07

Short Title: Amend Larceny Laws.

(Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

1 AN ACT TO AMEND VARIOUS LARCENY STATUTES AND TO CREATE THE
2 CRIMINAL OFFENSES OF THEFT OF INFANT FORMULA AND ORGANIZED
3 RETAIL THEFT.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 14-71 reads as rewritten:

7 "**§ 14-71. Receiving stolen goods.**

8 If any person shall receive any chattel, property, money, valuable security or other
9 thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either
10 at common law or by virtue of any statute made or hereafter to be made, such person
11 knowing or having reasonable grounds to believe the same to have been feloniously
12 stolen or taken, whether or not the item has been feloniously stolen or taken, he shall be
13 guilty of a Class H felony, and may be indicted and convicted, whether the felon
14 stealing and taking such chattels, property, money, valuable security or other thing, shall
15 or shall not have been previously convicted, or shall or shall not be amenable to justice;
16 and any such receiver may be dealt with, indicted, tried and punished in any county in
17 which he shall have, or shall have had, any such property in his possession or in any
18 county in which the thief may be tried, in the same manner as such receiver may be
19 dealt with, indicted, tried and punished in the county where he actually received such
20 chattel, money, security, or other thing; and such receiver shall be punished as one
21 convicted of larceny."

22 **SECTION 2.** G.S. 14-72(a) reads as rewritten:

23 "(a) Larceny of goods of the value of more than ~~one thousand dollars (\$1,000)~~
24 five hundred dollars (\$500.00) is a Class H felony. The receiving or possessing of stolen
25 goods of the value of more than ~~one thousand dollars (\$1,000)~~ five hundred dollars
26 (\$500.00) while knowing or having reasonable grounds to believe that the goods are
27 stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a
28 Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of
29 this section is a Class H felony. Except as provided in subsections (b) and (c) of this

1 section, larceny of property, or the receiving or possession of stolen goods knowing or
2 having reasonable grounds to believe them to be stolen, where the value of the property
3 or goods is not more than ~~one thousand dollars (\$1,000)~~, five hundred dollars (\$500.00),
4 is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the
5 value of the property stolen."

6 **SECTION 3.** G.S. 14-72.1 reads as rewritten:

7 "**§ 14-72.1. Concealment of merchandise in mercantile establishments.**

8 (a) Whoever, without authority, willfully conceals the goods or merchandise of
9 any store, not theretofore purchased by such person, while still upon the premises of
10 such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as
11 provided in subsection (e). Such goods or merchandise found concealed upon or about
12 the person and which have not theretofore been purchased by such person shall be prima
13 facie evidence of a willful concealment.

14 (b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2.

15 (c) A merchant, or the merchant's agent or employee, or a peace officer who
16 detains or causes the arrest of any person shall not be held civilly liable for detention,
17 malicious prosecution, false imprisonment, or false arrest of the person detained or
18 arrested, where such detention is upon the premises of the store or in a reasonable
19 proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in
20 detaining or in causing the arrest of such person, the merchant, or the merchant's agent
21 or employee, or the peace officer had at the time of the detention or arrest probable
22 cause to believe that the person committed the offense created by this section. If the
23 person being detained by the merchant, or the merchant's agent or employee, is a minor
24 under the age of 18 years, the merchant or the merchant's agent or employee, shall call
25 or notify, or make a reasonable effort to call or notify the parent or guardian of the
26 minor, during the period of detention. A merchant, or the merchant's agent or employee,
27 who makes a reasonable effort to call or notify the parent or guardian of the minor shall
28 not be held civilly liable for failing to notify the parent or guardian of the minor.

29 (d) Whoever, without authority, willfully transfers any price tag from goods or
30 merchandise to other goods or merchandise having a higher selling price or marks said
31 goods at a lower price or substitutes or superimposes thereon a false price tag or other
32 product code used to identify the sales price and then presents said goods or
33 merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall
34 be punished as provided in subsection (e).

35 Nothing herein shall be construed to provide that the mere possession of goods or
36 the production by shoppers of improperly priced merchandise for checkout shall
37 constitute prima facie evidence of guilt.

38 (d1) Notwithstanding subsection (e) of this section, any person who violates
39 subsection (a) of this section by using a lead-lined or aluminum-lined bag, a lead-lined
40 or aluminum-lined article of clothing, or a similar device to prevent the activation of
41 any antishoptlifting or inventory control device is guilty of a Class H felony.

42 (d2) Notwithstanding subsection (e) of this section, any person who violates
43 subsection (a) of this section by using an exit door erected and maintained to comply
44 with the requirements of 29 C.F.R. § 1910 Subpart E, upon which door has been placed

1 a notice, sign, or poster providing information about the felony offense and punishment
2 provided under this subsection, to exit the premises of a store is guilty of a Class H
3 felony.

4 (d3) Notwithstanding subsection (e) of this section, any person who violates
5 subsection (a) of this section by removing, destroying, or deactivating a component of
6 an antishoplifting or inventory control device to prevent the activation of any
7 antishoplifting or inventory control device is guilty of a Class H felony.

8 (d4) Notwithstanding subsection (e) of this section, any person who violates
9 subsection (a) of this section by affixing a product code obtained or created by the
10 person for the purpose of fraudulently obtaining goods or merchandise from a merchant
11 at less than its actual sale price is guilty of a Class H felony.

12 (e) Punishment. – For a first conviction under subsection (a) or (d), or for a
13 subsequent conviction for which the punishment is not specified by this subsection, the
14 defendant shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be
15 suspended only on condition that the defendant perform community service for a term
16 of at least 24 hours. For a second offense committed within three years after the date the
17 defendant was convicted of an offense under this section, the defendant shall be guilty
18 of a Class 2 misdemeanor. The term of imprisonment may be suspended only on
19 condition that the defendant be imprisoned for a term of at least 72 hours as a condition
20 of special probation, perform community service for a term of at least 72 hours, or both.
21 For a third or subsequent offense committed within five years after the date the
22 defendant was convicted of two other offenses under this section, the defendant shall be
23 guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a
24 condition of special probation is imposed to require the defendant to serve a term of
25 imprisonment of at least 11 days. However, if the sentencing judge finds that the
26 defendant is unable, by reason of mental or physical infirmity, to perform the service
27 required under this section, and the reasons for such findings are set forth in the
28 judgment, the judge may pronounce such other sentence as the judge finds appropriate.

29 (f) Community Service Period. – If the judgment requires a defendant sentenced
30 under this section to perform a specified number of hours of community service, the
31 community service must be completed within:

- 32 (1) 90 days, if the amount of community service required is 72 hours or
33 more;
- 34 (2) 60 days, if the amount of community service required is at least 48
35 hours but less than 72 hours; and
- 36 (3) 30 days, if the amount of community service required is at least 24
37 hours but less than 48 hours.

38 The court may extend these time limits upon motion of the defendant if it finds that the
39 defendant has made a good faith effort to comply with the time limits specified in this
40 subsection. Failure to complete the community service requirement within the
41 applicable time limits is a violation of the defendant's probation.

42 (g) Limitations. – For active terms of imprisonment imposed under this section:

- 43 (1) The judge may not give credit to the defendant for the first 24 hours of
44 time spent in incarceration pending trial;

1 (2) The defendant must serve the mandatory minimum period of
2 imprisonment and good or gain time credit may not be used to reduce
3 that mandatory minimum period; and

4 (3) The defendant may not be released or paroled unless he is otherwise
5 eligible and has served the mandatory minimum period of
6 imprisonment."

7 **SECTION 4.** Article 16 of Chapter 14 of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 14-72.7. Theft of infant formula.**

10 (a) The term "infant formula", as used in this section, has the same meaning as
11 found in 21 U.S.C. § 321(z).

12 (b) If any person takes and carries away infant formula valued in excess of one
13 hundred dollars (\$100.00), that person is guilty of a Class H felony."

14 **SECTION 5.** Chapter 14 of the General Statutes is amended by adding a
15 new Article to read:

16 "Article 16A.

17 "Organized Retail Theft.

18 **"§ 14-86.5. Definitions.**

19 The following definitions apply in this Article:

20 (1) "Retail property." – Any new article, product, commodity, item, or
21 component intended to be sold in retail commerce.

22 (2) "Retail property fence." – A person or business that buys retail
23 property knowing or believing that retail property is stolen.

24 (3) "Theft." – To take possession of, carry away, transfer, or cause to be
25 carried away the retail property of another with the intent to steal the
26 retail property.

27 (4) "Value." – The retail value of an item as advertised by the affected
28 retail establishment, to include all applicable taxes.

29 **"§ 14-86.6. Organized retail theft.**

30 (a) Offense: Organized Retail Theft. – A person who conspires with another
31 person to commit theft of retail property from a retail establishment, with a value
32 exceeding one thousand five hundred dollars (\$1,500) aggregated over a 90-day period,
33 with the intent to sell that retail property for monetary or other gain, and who takes or
34 causes that retail property to be placed in the control of a retail property fence or other
35 person in exchange for consideration is guilty of a Class G felony.

36 (b) Offense: Receiving and Possessing Retail Property Obtained by Organized
37 Retail Theft. – A person who receives or possesses, with the intent to distribute, any
38 retail property into interstate commerce which has been taken or stolen in violation of
39 this section is guilty of a Class G felony.

40 (c) Explicit Representation of Theft of Retail Property. – It is not a defense to a
41 charge of receiving stolen retail property in violation of this section that the retail
42 property was obtained by means other than through the commission of a theft offense if
43 the retail property was explicitly represented to the accused person as being obtained
44 through the commission of a theft offense.

1 (d) Venue. – Venue for criminal actions to enforce the provisions of this section,
2 including criminal actions with respect to each of the offenses included within
3 organized retail theft as defined by this section that have been committed, attempted, or
4 conspired to be committed by two or more persons, shall be in any county in which at
5 least one criminal offense has occurred that constitutes part of the organized retail theft
6 offenses. It is the intent of the General Assembly that one State court may have
7 jurisdiction over all the conduct, persons, and retail property which are part of, or are
8 directly related to, each and all of the criminal offenses forming part of the organized
9 retail theft offenses; however, it is discretionary, not mandatory, to bring all criminal
10 actions in one jurisdiction when organized retail theft offenses involve two or more
11 counties.

12 (e) Forfeiture. – Any person who violates any provision of this section shall
13 forfeit to the State any interest the person has acquired or maintained in violation of this
14 section."

15 **SECTION 6.** This act becomes effective December 1, 2007, and applies to
16 offenses committed on or after that date.