

ORGANIZED RETAIL CRIME ACT

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House Bills 5843 and 5902

Sponsor: Rep. Joseph Graves

Committee: Commerce

Complete to 9-24-12

A SUMMARY OF HOUSE BILL 5843 AS INTRODUCED 9-11-12 & HOUSE BILL 5902 AS INTRODUCED 9-13-12

House Bill 5843 would create a new act, "the Organized Retail Crime Act," which would make organized retail crime a felony and also would create an Organized Retail Crime Advisory Board within the Department of State Police.

The bill defines "organized retail crime" as the theft of retail merchandise from a retail merchant with the intent or purpose of reselling, distributing, or otherwise reentering the retail merchandise in commerce, including the transfer of the stolen merchandise personally, through the mail, or through any electronic medium, including the internet, in exchange for anything of value. The offense would be a felony punishable by imprisonment for not more than five years and/or a fine of \$5,000. House Bill 5902 would make complementary amendments in order to put the G felony into the sentencing guidelines in the Code of Criminal Procedure.

The bill contains an "intent" section in which the retail merchandise is described as "including, but not limited to, medications, infant formula, and pharmaceutical items." The body of the bill defines the term "retail merchandise" as any new article, product, commodity, item, or component intended to be sold in retail commerce.

The Nature of the Crime

A person would be considered guilty of organized retail crime if an individual or entity:

- Knowingly commits an organized retail crime.
- Organizes, supervises, finances, or otherwise manages or assists another person in committing an organized retail crime.
- Removes, destroys, deactivates, or knowingly evades any component on an anti-shoplifting or inventory control device to prevent the activation of that device or to facilitate another person in committing an organized retail crime.
- Conspires with another person to commit an organized retail crime.
- Receives, purchases, or possesses retail merchandise for sale or resale knowing or believing the retail merchandise to be stolen from a retail merchant.
- Uses any artifice, instrument, container, device, or other article to facilitate the commission of an organized retail crime act.
- Knowingly causes a fire exit alarm to sound or otherwise activate, or deactivates or prevents a fire alarm from sounding, in the commission of an organized retail

crime or to facilitate the commission of an organized retail crime by another person.

Penalties/Forfeiture/Enforcement

As noted earlier, the offense would be a felony punishable by imprisonment for not more than five years and/or a fine of \$5,000. The court would order a person found guilty to make restitution to any retail merchant victim and to reimburse the governmental entity for expenses incurred in violation of the act. If the true owner of merchandise cannot be found, the merchandise and any proceeds from its sale or resale would be subject to forfeiture to the state for use by the Organized Retail Crime Advisory Board.

It would not be a defense to a charge under the act that property was not stolen, embezzled, or converted property at the time of the violation if the property was explicitly represented to the accused person as being stolen, embezzled, or converted property.

The new act would not prohibit a person from being charged with, convicted of, or sentenced for any violation of law arising out of the same criminal transaction that was a violation of the act.

Organized Retail Crime Advisory Board

This board, with the Department of State Police, would be made up of five members, including the state Attorney General (or a designee). The Governor would appoint the other four, with the advice and consent of the State Senate with one member to be a county prosecutor or assistant prosecutor, one member to represent law enforcement, one recommended by the Michigan Retailers Association, and one to represent the general public. Terms would be for four years. The per diem compensation and the schedule for reimbursement of expenses would be established annually by the Legislature. The board could employ a staff subject to Civil Service rules and within fiscal restraints.

The board would elect its own chair and would have to meet at least four times each year. Minutes must be kept of its proceedings. The board would be subject to the Open Meetings Act and the Freedom of Information Act.

The duties of the board would be to: (1) develop a database of organized retail crimes; (2) compile annual statistics; (3) recommend actions to be taken by the State Police and other law enforcement; (4) submit an annual report to the State Police Director on the act's effectiveness in reducing organized retail crime. The board could employ a staff subject to Civil Service rules and within fiscal restraints.

FISCAL IMPACT:

To the extent that the bills result in a greater number of felony convictions or increased penalties than would otherwise have occurred, they would increase costs on state and local correctional systems. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative

and operational costs. The cost of local incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,300 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

[Also note that the bill requires the Legislature to annually fix the per diem compensation and the reimbursement schedule for the members of the Organized Retail Crime Advisory Board to be created within the Department of State Police, and allows the board to hire a staff "subject to civil service rules and within fiscal restraints."]

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.