



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5843 (Substitute H-2 as reported with amendment)
House Bill 5902 (as reported without amendment)
Sponsor: Representative Joseph Graves
House Committee: Commerce
Senate Committee: Judiciary

CONTENT

House Bill 5843 (H-2) would create the "Organized Retail Crime Act" to do the following:

- Prohibit and prescribe a penalty for engaging in organized retail crime.
- Provide for forfeiture to the State of stolen retail merchandise, if the true owner of the stolen merchandise could not be identified.
- Require a court to order a person found guilty of organized retail crime to make restitution to a retail merchant, and to reimburse the governmental entity for expenses incurred as a result of the violation.
- Create the Organized Retail Crime Advisory Board within the Michigan Department of State Police (MSP).
- Require the proposed Act to be administered by the MSP Director.

A person would be guilty of organized retail crime when he or she, alone or in association with another, did any of the following:

- Knowingly committed an organized retail crime.
- Organized, supervised, financed, or otherwise managed or assisted another person in committing an organized retail crime.
- Removed, destroyed, deactivated, or knowingly evaded any component of an antishoplifting or inventory control device to prevent its activation or to facilitate another person in committing an organized retail crime.
- Conspired with another person to commit an organized retail crime.
- Received, purchased, or possessed retail merchandise for sale or resale knowing or believing the merchandise to be stolen from a retail merchant.
- Used any artifice, instrument, container, device, or other article to facilitate the commission of an organized retail crime act.
- Knowingly caused a fire exit alarm to sound or otherwise activate, or deactivated or prevented a fire exit alarm from sounding, in the commission of an organized retail crime or to facilitate the commission of an organized retail crime by another person.
- Knowingly purchased a wireless telecommunication device using fraudulent credit, or knowingly procured a wireless telecommunications service agreement or used another person to obtain such an agreement, with the intent to defraud another or breach the agreement.

"Organized retail crime" would mean 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 retail merchandise to another retail merchant or to any other person personally, through the mail, or through any electronic medium, including the internet, in exchange for anything of value.

"Retail merchandise" would mean any new article, product, commodity, item, or component intended to be sold in retail commerce. "Retail merchant" would mean any person that was in the business of selling retail merchandise at retail.

Organized retail crime would be a felony punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both.

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

The bill would take effect on January 1, 2013.

House Bill 5902 would amend the Code of Criminal Procedure to include a violation of the proposed Organized Retail Crime Act in the sentencing guidelines. A violation would be Class G property felony with a statutory maximum sentence of five years' imprisonment.

The bill would take effect on January 1, 2013, and is tie-barred to house Bill 5843.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5843 (H-2) would likely result in additional felony dispositions, which could increase costs of incarceration and community supervision for State and local government. Some criminal acts covered under this proposed offense also may be charged as first-degree retail fraud (750.356c), which is a felony with a maximum penalty of five years' imprisonment.

The bill would have a minimal fiscal impact on the Department of State Police, requiring some minor expenditures for costs of housing the proposed Organized Retail Crime Advisory Board and for related database and reporting responsibilities.

House Bill 5902 would add an Organized Retail Crime Act violation to the Code of Criminal Procedure as a Class G felony. Class G is the second-lowest classification in the sentencing guidelines; as such, it is most likely to recommend intermediate sanctions such as probation, although straddle cells are still possible for those with long or severe criminal histories.

Date Completed: 12-7-12

Fiscal Analyst: Bruce Baker
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.