



Senate Fiscal Agency
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**BILL ANALYSIS**

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House Bill 5843 (Substitute H-2 as passed by the House)
Sponsor: Representative Joseph Graves
House Committee: Commerce
Senate Committee: Judiciary

Date Completed: 12-3-12

CONTENT

The bill 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.**

The bill would take effect on January 1, 2013.

Organized Retail Crime

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 the activation of the device 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 retail 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. The proposed 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 violated the Act.

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.

Forfeiture

If the true owner of stolen retail merchandise could not be identified, the merchandise and any proceeds from its sale or resale would be subject to forfeiture to the State for use by the proposed Organized Retail Crime Advisory Board in the performance of its duties. The court would have to order forfeiture of the retail merchandise in the manner and upon terms and conditions as the court determined appropriate.

Restitution

The court would have to order a person who was found guilty of organized retail crime to make restitution to any retail merchant victim in the manner provided in the Crime Victim's Rights Act. The court also would have to order the person to reimburse the governmental entity for its expenses incurred as a result of the violation of the proposed in the manner provided under the Code of Criminal Procedure.

Advisory Board

The bill would create the Organized Retail Crime Advisory Board within the MSP. The Board would consist of the following members:

- One county prosecuting attorney or an assistant county prosecuting attorney.
- One representative of law enforcement.
- The Attorney General or his or her designee.
- One member recommended by the Michigan Retailers Association.
- One member of the general public.
- The Director of the MSP or his or her designee.

All Board members, other than the Attorney General and MSP Director, would be appointed by the Governor by and with the advice and consent of the Senate for four-year terms. A vacancy would have to be filled in the same manner as the original appointment for the remainder of any unexpired term.

The Board's duties would be to develop a database of organized retail crimes, compile annual statistics on organized retail crime acts, recommend actions to be taken by the MSP and law enforcement to combat organized retail crime, and submit an annual report to the MSP Director on the effectiveness of the Act in reducing organized retail crime.

The MSP Director, or the Director's designee, would serve as chairperson of the Board. The Board would have to meet at least four times each year at a location designated by the chairperson, and special meetings could be called by the chairperson or upon written request of at least three Board members.

The Board would have to keep minutes of its proceedings and make and maintain a record of its action and business. The Board would have to comply with the Open Meetings Act and the Freedom of Information Act.

Board members could not be compensated for their service but could be reimbursed for their actual and reasonable expenses. The Board could not retain a staff.

Legislative Intent

The bill states, "It is the intent of the legislature to protect the public health, safety, and welfare of the citizens of the state by recognizing the negative impact of persons who engage in planned, organized, and methodical theft of retail merchandise for resale in unregulated retail commerce, including, but not limited to, medications, infant formula, and pharmaceutical items; the potential use of the proceeds for the sale of that merchandise to support other crimes and criminal enterprises and the nature, extent, and impact of those activities upon commerce and public safety; and to take appropriate actions to prevent and punish those who engage in those activities."

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would create a new felony of organized retail crime which would be punishable by up to five years' imprisonment or a fine of \$5,000, or both. There are no data to indicate how many individuals would be convicted of the proposed offense; therefore, the fiscal impact is indeterminate. However, the bill 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.

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.