

HOUSE BILL No. 5843

September 11, 2012, Introduced by Rep. Graves and referred to the Committee on Commerce.

A bill to prohibit organized retail crime and to provide penalties for that crime; to provide for forfeiture of and restitution for stolen retail merchandise in certain circumstances; to create the organized retail crime advisory board and to prescribe its powers and duties; and to provide for the administration of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "organized retail crime act".

3 Sec. 2. It is the intent of the legislature to protect the
4 public health, safety, and welfare of the citizens of the state by
5 recognizing the negative impact of persons who engage in planned,
6 organized, and methodical theft of retail merchandise for resale in

1 unregulated retail commerce, including, but not limited to,
2 medications, infant formula, and pharmaceutical items; the
3 potential use of the proceeds of the sale of that merchandise to
4 support other crimes and criminal enterprises and the nature,
5 extent, and impact of those activities upon commerce and public
6 safety; and to take appropriate actions to prevent and punish those
7 who engage in those activities.

8 Sec. 3. As used in this act:

9 (a) "Board" means the organized retail crime advisory board
10 created under section 6.

11 (b) "Department" means the department of state police.

12 (c) "Organized retail crime" means the theft of retail
13 merchandise from a retail merchant with the intent or purpose of
14 reselling, distributing, or otherwise reentering the retail
15 merchandise in commerce, including the transfer of the stolen
16 retail merchandise to another retail merchant or to any other
17 person personally, through the mail, or through any electronic
18 medium, including the internet, in exchange for anything of value.

19 (d) "Person" means an individual, sole proprietorship,
20 partnership, cooperative, association, corporation, limited
21 liability company, personal representative, receiver, trustee,
22 assignee, or other entity.

23 (e) "Retail merchant" means any person that is in the business
24 of selling retail merchandise at retail.

25 (f) "Retail merchandise" means any new article, product,
26 commodity, item, or component intended to be sold in retail
27 commerce.

1 Sec. 4. (1) A person is guilty of organized retail crime when
2 that person, alone or in association with another person, does any
3 of the following:

4 (a) Knowingly commits an organized retail crime.

5 (b) Organizes, supervises, finances, or otherwise manages or
6 assists another person in committing an organized retail crime.

7 (c) Removes, destroys, deactivates, or knowingly evades any
8 component of an antishoplifting or inventory control device to
9 prevent the activation of that device or to facilitate another
10 person in committing an organized retail crime.

11 (d) Conspires with another person to commit an organized
12 retail crime.

13 (e) Receives, purchases, or possesses retail merchandise for
14 sale or resale knowing or believing the retail merchandise to be
15 stolen from a retail merchant.

16 (f) Uses any artifice, instrument, container, device, or other
17 article to facilitate the commission of an organized retail crime
18 act.

19 (g) Knowingly causes a fire exit alarm to sound or otherwise
20 activate, or deactivates or prevents a fire exit alarm from
21 sounding, in the commission of an organized retail crime or to
22 facilitate the commission of an organized retail crime by another
23 person.

24 (2) Organized retail crime is a felony punishable by
25 imprisonment for not more than 5 years or a fine of \$5,000.00, or
26 both.

27 (3) If the true owner of stolen retail merchandise cannot be

1 identified, the retail merchandise, and any proceeds from the sale
2 or resale of that merchandise, is subject to forfeiture to the
3 state for use by the board in the performance of its duties. The
4 court shall order forfeiture of the retail merchandise in the
5 manner and upon terms and conditions as determined by the court to
6 be appropriate.

7 (4) The court shall order a person who is found guilty of
8 organized retail crime to make restitution to any retail merchant
9 victim in the manner provided in the crime victim's rights act,
10 1985 PA 87, MCL 780.751 to 780.834, and to reimburse the
11 governmental entity for its expenses incurred as a result of the
12 violation of this act in the manner provided in section 1f of
13 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
14 769.1f.

15 (5) It is not a defense to a charge under this section that
16 the property was not stolen, embezzled, or converted property at
17 the time of the violation if the property was explicitly
18 represented to the accused person as being stolen, embezzled, or
19 converted property.

20 Sec. 5. This act does not prohibit a person from being charged
21 with, convicted of, or sentenced for any violation of law arising
22 out of the same criminal transaction that violates this act.

23 Sec. 6. (1) There is created within the department of state
24 police an organized retail crime advisory board. The board shall
25 consist of the following members:

26 (a) One member who is a county prosecuting attorney or an
27 assistant county prosecuting attorney.

1 (b) One member who is a representative of law enforcement.

2 (c) The state attorney general or his or her designated
3 representative.

4 (d) One member who is recommended by the Michigan retailers
5 association.

6 (e) One member who is a member of the general public.

7 (2) All members of the board, other than the attorney general,
8 shall be appointed by the governor by and with the advice and
9 consent of the senate for terms of 4 years.

10 (3) A vacancy on the board shall be filled in the same manner
11 as the original appointment for the remainder of any unexpired
12 term.

13 (4) The duties of the board shall be to develop a database of
14 organized retail crimes, to compile annual statistics on organized
15 retail crime acts, to recommend actions to be taken by the
16 department and law enforcement to further combat organized retail
17 crime, and to submit an annual report to the director of the
18 department on the effectiveness of this act in reducing organized
19 retail crime.

20 (5) Annually the board shall elect a chairperson from its
21 membership. The board shall meet not less often than 4 times each
22 year. Special meetings may be called by the chairperson, or upon
23 written request of not fewer than 3 board members. Meetings shall
24 be held at a location designated by the chairperson.

25 (6) The board shall keep minutes of its proceedings. A record
26 of board action and business shall be made and maintained.

27 (7) The per diem compensation for members of the board and the

1 schedule for reimbursement of expenses shall be established
2 annually by the legislature.

3 (8) The board may employ a staff to assist it in the
4 performance of its duties, subject to civil service rules and
5 within fiscal restraints.

6 (9) The business performed by the board shall be conducted at
7 a public meeting of the board held in compliance with the open
8 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

9 (10) A writing prepared, owned, used, in the possession of, or
10 retained by the board in the performance of an official function
11 shall be made available to the public in compliance with the
12 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

13 Sec. 7. This act shall be administered by the director of the
14 department.

15 Enacting section 1. This act takes effect January 1, 2013.